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MUNICIPAL CHARTERS

A DISCUSSION OF THE ESSENTIALS OF A CITY CHARTER WITH FORMS OR MODELS FOR ADOPTION

BY

NATHAN MATTHEWS, LL.D.

MAYOR OF BOSTON, 1891–1895

CHAIRMAN, BOSTON FINANCE COMMISSION, 1907–1909

LECTURER ON MUNICIPAL GOVERNMENT IN HARVARD UNIVERSITY

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PREFATORY NOTE

THIS book is mainly the outcome of a course of instruction given in the Department of Government at Harvard University during the academic year 1911–12. It is now printed with some additions, explanations and alternative suggestions as the first volume in a series of publications dealing with the general subject of municipal government.

The attention of the reader is particularly directed to the fact that the author's object has been to prepare a practical handbook of municipal legislation with special emphasis on *administrative* provisions, and that he regards the *political* mechanism of the city government as of relatively minor consequence.

The author would also call attention to the fact that both the administrative and the political features of the charters submitted in this book are, with few exceptions, based upon his own experience, official or professional, during the past thirty years.

Acknowledgment should be made of the author's indebtedness to Mr. Edwin A. Cottrell, Assistant in Government at the University, for his coöperation in the preparation of this book.

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PART I

THE ESSENTIALS OF AN AMERICAN CITY CHARTER

MUNICIPAL CHARTERS

CHAPTER I

Contents and Form

Towns and cities in American public law are regarded as political departments of the state government, and are in almost all respects subject to the will of the legislature. In some of the states certain rights are guaranteed and certain duties imposed by the constitution; and towns and cities may generally be made the recipient of trust funds, and are then *pro tanto* subject to the common law of trusts. In all the states, moreover, there is a class of property which if held by a municipal corporation at all is held in a private or proprietary capacity and as such is within the protection of the state and federal constitutions. With these exceptions, villages, fire and water districts, towns, cities and other territorial subdivisions of the state, whether formally incorporated or not, are, generally speaking, endowed with such powers and privileges only, and are subject to such duties as the legislature may from time to time prescribe.[1]

The special privileges resting on prescription, royal grant or custom, which still (though to a far less degree than in former times) affect the powers and duties of municipal corporations in England, are non-existent in this country. The names, mayor, alderman, councilman, and the like, have survived; but the powers and duties of these officials do not rest upon the basis of common law, custom or ancient grant, but upon modern statutes which are different in every state, and often different for every city in any given state.

[1] The best discussion of this subject in its legal aspects is to be found in Dillon, *The Law of Municipal Corporations* (5th ed., Boston, 1911) sec. 31–33, 55, 58, 69, 98, 100, 106–108, 111–124, 132, 278–289.

An American city is usually created by a special act or " charter " which establishes its political framework and contains a greater or less number of detailed provisions for the conduct of its affairs. This original instrument is modified as succeeding legislatures see fit; and it is often repealed in its entirety and another substituted in its stead. The new enactments, like the original charter, are subject to specific amendment and to the general laws enacted by subsequent legislatures. Revisions of the general laws are frequent; and, in the case of the larger cities, efforts are sometimes made to arrange and coördinate the accumulated mass of laws relating to them by means of " consolidated " charters. The provisions of law affecting municipal government are thus contained either in formal charters, specific amendments, or general municipal laws; all three forms of enactment being used indifferently for any political or administrative provision which the legislature desires to apply to the cities within its jurisdiction. The term " city charter " is commonly and legally used to designate not only the original act of incorporation where there is one, but any instrument substituted at a later date, together with such acts of the legislature, whether or not specifically described as amendments, which are such in effect; that is, to designate and include the totality of legislation affecting the organization and administration of a particular city.[1] The constitutions of some of our states also contain provisions which are in the nature of charter restrictions upon the government of cities.

The proper scope of a city charter, as distinguished from other forms of legislation affecting municipal corporations, is thus not easy to determine; and there is no uniformity of practice or opinion to rely upon.

The fact that the organic laws affecting the administration of a given city are not to be found within the pages of a single statute,

[1] The following decisions of the courts may be referred to:

" The charter, as it is called, consists of the creative act and all laws in force relating to the corporation whether defining its powers or regulating their mode of exercise." — *People ex rel Rochester* v. *Briggs*, 50 N. Y. 553, 560.

The word " charter " when applied to municipal corporations may be defined as " the enabling acts under which a municipal corporation exercises its privileges and powers and performs its duties and obligations." — *State ex rel Arosin* v. *Ehrmantrout*, 63 Minn. 104.

but must be sought for in charters, amendments and miscellaneous laws often aggregating many hundred in number,[1] is not only a stumbling block to the inquiring citizen but an encouragement to mismanagement and fraud. The more intricate and uncertain the provisions of law, the greater the opportunities for a corrupt use of them; and the citizen who has not made a special study of these complications is at a great disadvantage as compared with the municipal politician who is ignorant perhaps of every other subject, but a master of this.

Many city charters contain too much detail; others not enough. The management of some department is often, for instance, the subject of an elaborate chapter or statute, which in practice is found ineffectual to secure the end in view, because some essential direction is omitted, and the city officials do what the law requires and no more. There is too much attention, particularly in the newer charters, to political machinery, and too little to administrative methods. There is too much hasty re-enactment and copying of the provisions of prior charters, thus perpetuating and spreading their defects. Our city charters, moreover, are as a rule carelessly drawn, thus requiring constant amendment. There is no uniformity in language, order or terminology; and there is generally an unnecessary amount of repetition.

In drafting a new charter or municipal law, we ought, therefore, so far as substance is concerned, to distinguish in the first place, between those provisions which are appropriate to such charters or laws, and those which fall more fittingly in the domain of the general law. Some subjects clearly belong to one class or the other; but many are on the border line, and opinions may well differ as to whether they should be included in a municipal charter or not. The writer has assumed that such matters as the suffrage, the taxation of property, the control of the public ways, the public health, fire and police protection, the sale of intoxicating liquors, the taking of property by eminent domain, the crim-

[1] As illustrating this point it may be noted that since the passage in 1854 of the present so-called "charter" of the city of Boston the Massachusetts legislature has enacted over twelve hundred laws affecting that city, nearly all of which are in the nature of amendments to the act of 1854.

inal law, and in general all questions of judicial procedure, affect the citizens of the state as such rather than as members of a particular city; and that legislation on these and similar topics of general concern, although sometimes found in city charters or charter amendments, has no proper place in such statutes.[1] The question is largely one of individual preference, and no claim is made that the writer's selection is the best. He has merely endeavored to draw the line in such a way as, in his experience, will best suit the practical convenience of city officials and others who have occasion to inform themselves as to the scope and limits of municipal power.

The next question of substance to consider is whether a given provision of law should be put into a specific city charter, or should be enacted as part of a general law affecting all cities, or all cities of a certain class. This question will be decided differently in the different states in accordance with the provisions of the state constitution, if there are any on the subject; and also in compliance with current opinion on the subject of uniformity in municipal laws. The charter drafts contained in this volume include many provisions relating to municipal administration which in some states commonly have been, and in others must be incorporated in general laws applicable to all cities, or to all cities of a certain class; because if the drafts are to serve as models for the organization and administration of cities as well in states which do not legislate on this subject by general law as in those which do, they must cover the whole field of such legislation. If a combination of special charters and general laws is preferred, it will be found that any of the administrative details of the accompanying bills may readily be recast in the form of a general law. The writer's own view is that uniformity in municipal legislation is a very desirable thing, and the bills in this volume have accordingly been written with the object of making them applicable, with but few changes, to a general municipal law as well as to a charter for some particular city.

[1] Some apparent departures from this policy may be noted in the charter drafts. Absolute consistency in a matter of this sort is impossible.

So far as form goes, the improvements needed are condensation in a single instrument, a simple and logical arrangement, a uniform terminology, consistency between the different parts, and the avoidance of ambiguities and unnecessary repetition.

The accompanying charters have been drafted with the intent to incorporate in them such political and administrative provisions as, in the experience and opinion of the writer, are desirable provisions of a city charter or general municipal law; to arrange the matter in a logical order; to condense it as much as possible without creating ambiguity; and to prepare an instrument which, with but slight alterations, may serve as a model for legislation in any state respecting cities of any size.

The details of the accompanying bills may seem to some to be too numerous; but no topic has been included which has not been the subject of legislation by some state for application to one or more of the cities within its limits; and, except as indicated in the notes, no provision has been inserted which has not been tested in actual practice or is not based upon the experience, professional or official, of the writer. The instruments as a whole are much simpler and shorter than the body of statutes, general or special, which, together with the charter itself, constitute the organic law of most American cities.[1]

A minor difficulty in drafting the bills submitted in this volume was presented by the great differences in the state laws to which a city charter or general municipal law must constantly refer. While it was felt that, in order to be most useful as precedents or models, the drafts should conform to the general laws of some one state, and while Massachusetts was selected for that purpose, the attempt has been made to draw the bills, both as to form and substance, in such a way as to render them available, with as few changes as possible, for cities in any state. In some particulars, as where a state board or commission is referred to which has no counterpart in the state in which it may be sought to apply the

[1] One of the latest city charters, that adopted by the city of Portland, Ore., in 1913, consists of 180 closely printed pages. On the other hand many charters, especially of the commission type, are so short and incomplete as to amount to little more than a perpetual invitation to amendment.

charter, a more or less substantial change must be made; but these hindrances to the general use of the instrument are not, it is hoped, either numerous or insuperable.

While the drafts submitted would best meet the requirements of a city containing about 100,000 people, they have been so drawn as to be applicable to smaller places by reducing the number of departments and officials, and to cities of larger size by increasing the same.

It is the hope of the writer that his book may be of assistance to those who are interested in municipal government in this country, and that in particular it may commend itself to legislative, municipal, and non-official committees who are drawing up municipal laws or charters, as providing a plan of city government at once practical, efficient and progressive.

CHAPTER II

The General Type of Charter

The first step in drawing a city charter is, of course, to determine its main lines, or type.

For this work it will be found that foreign precedents are of little or no value, owing to the great differences in political conditions and statutory practice; and that the American precedents, although very numerous, may be reduced to three main types or classes.

The few city charters granted prior to the Revolution were modeled, as to general plan, after the English charter of the seventeenth and eighteenth centuries; that is, there was a mayor with little power except as a magistrate and presiding officer, and a board of aldermen or common council, sometimes both, in which the general control of the city business was vested. The colonial city charters contained, however, but few of the close-corporation features of an English town or borough; and the dislike of such provisions together with the fear that if cities were once established they would be practically exempt from control by the legislature, kept their number small, and entirely prevented their creation in the New England colonies.[1]

[1] A brief account of American city charters in the pre-Revolutionary period is to be found in chapter v of Professor J. A. Fairlie's *Municipal Administration* (New York, 1906); to which may be added a reference to the abortive charters for "Agamenticus" (April 10, 1641) and "Georgeana" (March 1, 1641–42) issued for the settlement under the Gorges patent afterwards known as York. See Ebenezer Hazard, *Historical Collections* (2 vols., Philadelphia, 1792–1794), i, pp. 470–474 and 480–481.

The second of these instruments is particularly instructive as showing just what kind of cities might have been set up in the colonies if the effort of Gorges had been successful. This charter provided that the powers of the corporation should be the same as those of the city of Bristol. The charter of that city then in force was granted in 1581, and a simple inspection of its provisions will show why the General Court of Massachusetts was unwilling, both during the Colony and under the Pro-

After the Revolution municipal charters were granted by the state legislatures with gradually increasing freedom, and by 1825 practically all the larger centers of population were being administered as cities.

Generally speaking, these charters were of the same type: a mayor without executive or veto power, and a legislative body consisting of one or two chambers, generally styled aldermen and councilmen respectively, in which was lodged all power over appropriations, expenditures, and the executive officers of the city.

Although this became the accepted type of city charter in this country for practically one hundred years, or down to about 1880, it was not American in origin, and it was not based upon any distinctly American theory of government. It was simply the old English machinery for the administration of very different communities under totally different political conditions.

It was urged, notably in Boston during the years preceding the adoption of the charter of 1822, that this type of local government was justified by the federal system on the one hand, and on the other hand by the New England town system. Neither of these inconsistent claims was sound; for neither of these forms of government had in reality anything in common with the type of charter under which American cities were governed during the greater part of the nineteenth century. The New England town was in its inception what in Greece would have been called an oligarchy; in its later stages it became more democratic; but its powers have been exercised until quite recently under a restricted suffrage, and have at all times been extremely limited.[1] It con-

vince charter to allow the town of Boston to become an incorporated city of the English type. See Seyer's *Bristol Charters*, pp. 169, *seq.*

The hostility of the New England authorities to this type of charter is illustrated by the reasons given by Governor Winthrop for the omission of Gorges' province from the confederation of the United Colonies of New England in 1643. He said this was done "because they ran a different course from us both in their ministry and civil administration; for they had lately made Acomenticus (a poor village) a corporation and had made a taylor their mayor." — *Winthrop's Journal*, ii, p. 99, (Ed. James K. Hosmer, New York, 1908).

[1] The idea so widely spread by the fascinating writings of De Tocqueville, and still held by many persons (including James Bryce in *The American Commonwealth*) that the New England town was a sort of popular autocracy, is entirely without

stituted a form of local government far removed from that of the typical American city with its extensive powers, its elaborate office-holding machinery, its double legislative body, and its irresponsible committees. The analogy of the federal system was equally faulty; for the main features of this governmental scheme were the separation of the executive and legislative powers, the vesting of the former in a single officer directly responsible to the people or the states as a whole, and the existence of a check, by way of executive veto, over all the acts of the legislative branch. These, the essential ideas of the federal constitution, as well as of most of the state governments established during or after the Revolution, were entirely absent from the plan for city government then being worked out.

When surprise is shown that a nation which could devise a plan of national or federal government so admirable as ours has proved, on the whole, could also fail so deplorably in the administration of cities, it may be suggested that, while too great a dependence on forms of government is to be deprecated, one of the main causes of this failure was the adoption of a type of charter wholly unsuited to the administration of large communities upon the basis of popular suffrage.

That this form of charter, which may be called the city council committee type, proved a total failure, or at least that under it the worst possible government resulted, will scarcely be denied; but it is important to understand, as well as we can, the precise reasons for its failure before a charter can be drawn under which a repetition of the evils resulting from this type may be avoided.

These reasons are to be deduced from the investigations and corrective legislation of the past thirty or forty years, and are best studied in the reports of the numerous official commissions and citizens' committees which have investigated the scandals and extravagances of particular cities. These reports form a large literature, practically unknown in other countries, and constitute

foundation either in history or in law. For a condensed but, so far as it goes, accurate account of the relations between a Massachusetts town and the legislature from the earliest days to the present time, see the final *Report* of the Boston Finance Commission, 1907–1909, ii, pp. 177–192.

an ever-increasing monument to the failure of American public law in the branch of it which comes nearest to the citizen.

As the object of this book is to suggest practical legislation, rather than to present a history of municipal government in the United States, the reader must look for the facts and data bearing on the subject in the legislation and reports referred to, and the writer must content himself with a short summary of the chief reasons for the failure of American city government under the city council committee system.[1]

(1) There were too many elections and far too many elective officials; (2) the members of the city council were in great part, often in their entirety, elected by wards or districts, thus encouraging the domination of local interests in appropriations and expenditures; (3) there was no effective check upon the appropriating or borrowing power of the city council; (4) the executive departments were almost wholly in charge of committees of the city council; (5) the terms of the administrative officers were too short, and their tenure too uncertain; (6) the entire municipal service, including officers, employees, contracts and expenditures, was liable to be regarded, and did in many cases come to be regarded, as the legiti-

[1] These reports are unfortunately difficult of access. Among the more recent and instructive the following may be noted:

Boston — Charter Revision Reports of 1875 and 1884.
Finance Commission Reports, 1907–1914.

Philadelphia — Report on Bullitt Bill, adopted by Legislature 1885, and by the City 1887.

Chicago — Charter Convention; Digest of City Charters and other documents; Report on Charter — 1905.

Ohio Constitutional Convention, *Proceedings*, 1912.

New York — 1872. "Committee of Seventy" charter and former charters, 1830 to 1870.

1885. Tilden, S. J. "Municipal Abuses," being his argument in the trial of W. M. Tweed and others, — See *The Writings and Speeches of Samuel J. Tilden*, i, pp. 516–551 (2 vols., New York, 1885).

1896. Report of Charter Committee to the Greater New York Commission.

1900. Charter of the City of New York proposed by Charter Revision Commission appointed by the Governor in 1900, adopted 1901.

1904. Consolidated Charter with a history of charter-making. Brooklyn, 1904.

1907. Charter Revision Commission. Report to the Governor under ch. 600 of Laws of 1907.

mate spoils of partisan politics; and the machinery of government was so complicated that it was difficult to fix upon any particular individual the responsibility for extravagance, inefficiency, or corruption.

This is a fairly long list of defects; but all are traceable, in some measure at least, to the fact that the forms of government devised during post-mediaeval days in England for the close corporations established by royal prerogative as cities and boroughs, were adopted by the people of this country for the administration of their local affairs under universal suffrage.

The system was certain to work worse in large places than in small ones; and it was accordingly in the larger cities, Brooklyn, New York, Baltimore and Boston, that corrective measures were first demanded. The main result of these attempts at reform was the transfer to municipal government of some of the characteristic features of our state and federal system. The executive was given a veto power over the acts of the municipal legislature; and a separation of the legislative from the executive functions was effected, the latter being sometimes vested in officers directly elected by the people, but more generally concentrated in the mayor. Other devices, such as the creation of local boards and commissions, sometimes elective, sometimes appointed, and the administration of certain departments by state officials, were adopted in various states. There has also been a strong tendency in recent charter legislation to abolish the bicameral legislature, and to substitute a relatively small body with members elected at large. Longer terms for the elected officials, and a more permanent tenure for the employees of the city, as well as some system of civil service selection, are also features of the best-considered modern charters. The main contribution of the present generation to the art of municipal administration in this country has, however, been the development, by analogy with our state and federal system, of what may be termed the responsible executive type of charter.

The past few years have also witnessed the invention and spread of a scheme of municipal government by which the entire administration, both legislative and executive, is placed in the hands

of a small body or commission, elected at large.[1] This is the third and latest type.

Three main forms or types of city charter have thus been developed in this country — the city council committee type, the responsible executive type and the commission type. The first is a form of government which is un-American in origin, and has proved wholly ineffectual to provide good administration under the conditions which obtain in this country. The other two are distinctly American in origin and theory, and are now being subjected to the test of experience. Innumerable modifications and combinations of the distinctive features of these forms of charter are to be found; but the central idea will generally be seen to belong to one of these three types.[2]

In the opinion of the writer the best results, certainly in the case of large cities and probably in the case of cities of any size, are to be obtained from a charter drawn along the lines of the responsible executive type, with such modifications as the experi-

[1] A good account of the origin of the commission type of city charter will be found in *Commission Government in American Cities* by E. S. Bradford (New York, 1911).

[2] What may perhaps be termed a fourth type is now being developed as a modification of the commission plan. The entire executive business of the city is placed in charge of an official, styled the "city manager," appointed by the commissioners. This office seems to be a sort of compromise between that of the mayor in the responsible executive type of American city charter, and the burgomaster of a modern Prussian city. Given the instability of political conditions which obtains in this country, it seems difficult to believe that the "manager" of an American city will find himself in a position of greater independence than a mayor elected under a charter of the responsible executive type. The experiment promises, however, to be an interesting one.

Reference should possibly be made, also, to what has been termed the Newport type of charter, so called after the Rhode Island city which has adopted it. This plan involves the creation of a very large city council, which, according to its promoters, was to take the place of the town meeting of earlier days. The natural effect of this charter as drawn was, however, merely to intensify the evils of the city council committee type; and, so far as the writer can ascertain, this has been the practical result. A scheme could undoubtedly be devised for the application of the machinery of the town meeting to the government of cities which would be better than the Newport plan; but it must not be forgotten that the conditions of city life and politics are entirely different from the conditions under which the New England system of town government was developed. It is probably idle to expect from any such application, however ingenious, the sensible and economical administration which characterized this system for two centuries and a half after its first adoption.

ence of some of our larger cities under this form of government suggests.[1]

Experience has shown that democracy as understood and practiced in this country will accomplish more and make fewer mistakes in city government if the number of elective officers is small and the elections few, and if the chief responsibility for legislative and executive work is concentrated, separately, in a small number of persons directly responsible to the community as a whole. Experience has also shown that many of the worst forms of extravagance and fraud can effectually be prohibited by intelligent legislation. The type of charter best adapted to the case would therefore seem to be the responsible executive type with a single small legislative board or council, with such checks and balances as will prevent the grosser forms of extravagance and corruption, and with such a concentration of the several powers of the city government that at each succeeding election the voters may have no difficulty in determining who is and who is not responsible for what has been done or left undone. The commission type of charter presents many improvements over the old city council committee type and, if drawn with a view to practical results, is a far better type of government than the former; but it fails to concentrate the intelligence of the entire electorate upon the filling of a single office, and it omits the check upon extravagant appropriations and loans which is furnished by the veto power of the mayor under a charter of the responsible executive type.[2] The commission type has not yet been substituted,

[1] The first edition of Dillon on *Municipal Corporations*, published in 1872, contains in section 9 the following:

"Experience has also demonstrated the necessity of more power and more responsibility in the executive head of our municipal institutions," and a suggestion that the mayor be given a veto power and the sole power of appointment and removal.

The fifth edition of this work, published in 1911, after quoting the above words from the first edition, refers to the Brooklyn charter of 1882 as "based in its reform features essentially upon the principles suggested in the text"; but a word of caution is added that the experience to date (1911) in New York and other large cities, while it has not shown that this mode of municipal administration is not wise, has also not fully justified the expectations concerning its remedial efficacy.

[2] In some of the commission charters the mayor, although a member of the commission, has an independent power of veto; but this is a departure from what is

so far as the writer can learn, for a charter of the responsible executive type; and if applied to our larger cities the opportunity for misgovernment through the divided responsibility for the management of the executive departments would be great.

Moreover, the relative merits of the two plans from the standpoint of affirmative accomplishment should not be ignored. The object of a city charter should be not only to prevent abuses of power, but to secure the efficient use of power, so far as this can be done by law; that is, to furnish full scope and opportunity for good men when they are elected, as well as effective checks upon bad men. When the subject is considered not merely from the standpoint of the political advantage in concentrating responsibility, but with a view to the positive administrative value of a system which will give sufficient scope of action to a strong and able executive, the balance of advantage seems to the writer clearly to rest with the responsible executive type of charter. The criticism sometimes heard that the responsible executive type of charter leaves too little for the city council to do is, in the opinion of the writer, entirely unfounded. The matters over which the city council has jurisdiction are the most important of all, and are sufficient in number and difficulty to occupy all the time and attention which its members can be expected to devote to municipal affairs, unless it is desired that the city council should be filled with persons who have no occupation but politics.[1]

The first of the bills in Part II is therefore drawn along the lines of the strong executive type of charter which has been in force in some of the larger cities of this country for a generation more or less. These charters, however, except perhaps the latest Boston experiment, are all more or less of a compromise; whereas in the plan here presented the provisions for fixing the responsibility for the conduct of the executive business of the city upon the mayor, and for vesting concurrent power over appropriations, loans and other municipal legislation in the mayor and the city council, have been worked out on what the writer has tried to make a strictly

generally regarded as the central idea of a commission charter, and has not been followed in the drafts in Part II of this book.

[1] See the enumeration of the powers and duties.

logical and consistent plan. In the main the document resembles most closely the present charter of the city of Boston, or rather would resemble that charter if it were consolidated in a single instrument; but there are many important departures from this precedent, and the machinery of administration, in so far as the number and functions of the several departments are concerned, is better suited to a city of average size than to one of metropolitan dimensions and interests.

As the single, small commission has been shown to be a great improvement over the unwieldy, ward-elected city councils and irresponsible committees which it supplanted, and as there is a wide demand, at least from the smaller cities, for this type of charter, a plan will be found in Part II for adapting the charter to the commission scheme. This plan includes all the political and administrative features of the first draft, so far as these are not inconsistent with the main idea of government by commission, but is not encumbered with the untested innovations found in some charters of this type. There are several distinct kinds of commission charter in use, and in selecting that best adapted to the average city the writer has kept in mind the general views of public policy outlined in this and the succeeding chapter. The members of the commission are, in accordance with modern democratic principles, to be elected by the voters, not appointed by the governor or legislature.[1] The executive departments are divided among the different members of the commission by vote of the latter.[2] No provision is made for the initiative, the recall,

[1] Most of the city charters granted prior to the Revolution provided for the appointment of the mayor by the governor of the province. So also the charters granted to New Orleans in 1805 and to Detroit in 1806. In 1754 the Maryland legislature put the city of Baltimore into the hands of a commission of seven men designated in the act. See Fairlie's *Municipal Administration* (New York, 1906), ch. v.

In more recent times commissioners appointed by the governor of the state have been placed temporarily in charge of Galveston, Texas (1901), Chelsea, Mass., (1908) and Pittsburgh, Pa. (1911). The city of Washington has since 1876 been governed under an act of Congress by commissioners appointed by the president.

[2] In some charters each member of the commission is nominated and elected for the discharge of a specific part of the administrative work of the city; but the plan adopted by the writer is the more common and seems more consistent with the fundamental idea of a commission government.

or the referendum on petition. These features, found in most commission charters as well as in some others, are, in the writer's view, not only inconsistent with democracy as originated and hitherto practiced in this country, but are inherently incapable of application to municipal administration.[1] The commission charters, moreover, are, as a rule, drawn very hastily and blindly, particularly in the sections relating to administrative matters — a defect which may account for their frequent failure to produce the expected improvement. The same care in matters of detail and form has been given in this book to the commission charter as to the other type; and the drafts contained in Part II will be found to differ only in those particulars in which a divergence was unavoidable.

In both drafts the control of the schools is vested in a separate board, consisting, like the city council in the responsible executive charter and the commission in the other type, of a small single body elected at large. From one point of view, the schools may be regarded as an ordinary department properly in charge of officials named by the responsible executive officers of the city; but as an independent school board has become an almost universal feature of municipal government in this country, as its members are often elected by a different set of voters, and as the system has worked well enough, or has at least been relatively free from the evils which have affected the regular city business, it has been thought best to include in both bills a separate elective school committee.

Other matters which might perhaps have been considered under the heading " type of charter," will be discussed in chapters III or IV, or in the notes at the end of the volume.

[1] See further *infra*, ch. iii, g, pp. 28–33.

CHAPTER III

The Political Features of a City Charter

Among what would generally be regarded as the political issues are the suffrage, its limits and restrictions, the number of elective officers, the frequency of elections, the machinery of nominations and elections, the question of representation by districts or at large, the scope of the taxing and borrowing power, the control of the administration by popular vote, and the appointment and tenure of the administrative officers of the city.

a. *The suffrage*

As already indicated, it is assumed that such questions of general political policy as the basis of the suffrage will be determined by general law for the state at large. The suffrage is usually the same for municipal as for state officers; and even where the electorate for school committee is different from that for the other municipal officers, this is usually accomplished by a state law applicable to communities of all sizes, whether incorporated as cities or not.

Universal suffrage, modified in some states to a greater or less extent by educational qualifications, may be assumed to be the foundation of our political system, municipal as well as state and federal; and the main object of a city charter must be to formulate a scheme of administration suited to this fundamental condition. Limitation of the suffrage for municipal purposes to property-owners was a common feature of our political system in the early days; but these are long since passed. At the present time practically all such restrictions, as well as any provision by which, following the German custom, a preponderating influence at the polls is given to those having educational, business or property qualifications, may be assumed to be impractical, even if desirable.

In some states property-owners are still given a controlling voice in the determination of certain questions, such as the raising of money by loan. Such a provision seems not to have been deemed inconsistent with democratic principles; but it has generally been confined to the smaller communities.[1]

While the writer would be far from denying the advantage, from some standpoints, of restrictions on the electoral franchise, and is inclined to the view that something of the sort may some day become a political possibility as a reaction against the unreflecting radicalism of the moment, he is of the opinion that, as matters stand, both extremes should be avoided. The accompanying bills, therefore, contain no provision for a special or limited electorate, either for the municipal officers or for the decision of such questions as may be submitted to popular vote.

b. *Number and terms of elective officers*

As one of the main defects of the older charters was the multiplicity of elective officials and the frequency with which they could be changed, the tendency of the reforms of the past thirty years has been to reduce their number and to lengthen their tenure. This has been accomplished by substituting for the bicameral city council, where that existed, a single legislative body; by reducing the membership of this board so that only two or three places on it must be filled each year; by having all the higher administrative officers, many of whom were formerly elected, appointed by the mayor; and by giving the elective officers terms of from two to four years instead of requiring the people, as was too often the case, to fill each office every year.

[1] See, for instance, the New York Village Corporation Law.

The payment of poll or other personal taxes for the year is, in some states, made a prerequisite to voting. In Massachusetts down to 1892 the voter was required to pay a tax of one dollar before he could be registered. The effect of the abolition of this requirement was to increase the voting list of the city of Boston by about 21%, and to reduce the percentage of property-owning voters to about 20%. At the present time with a much larger number of registered voters the proportion owning real or personal estate has fallen to less than 17%. See the writer's Valedictory Address as Mayor of Boston, printed in Matthews, *The City Government of Boston* (Boston, 1895), p. 193, and the *Reports* of the Finance Commission, 1907–1909, ii, pp. 238–239.

If the experience of the past century has demonstrated anything it is that, in order to secure the best results from the operation of universal suffrage in large cities, the tenure of office should not be too short, and the number of offices to be filled at each election should be few. The resulting "short ballot," as it has been called, may be regarded as the keystone of an effective American city charter.

c. *Nominations and elections*

Until relatively recent times candidates for municipal office were nominated by party caucuses or delegate conventions, or by independent groups of citizens; and at the election each party or group had its own ballot. The introduction of the Australian system of voting and the adoption of the official ballot changed the form in which independent candidacies could be made effective, but left the nomination of the regular party candidates to caucuses and conventions as before.

Dissatisfaction with the often arbitrary and unfair conduct of these party gatherings and a belief that they were frequently manipulated to secure the nomination of candidates whom the party voters would not themselves select, led to the widespread adoption of the party primary. This system, originally a voluntary substitute for the representative convention, was then in many places converted by law into an official primary conducted as a regular election; and in this shape is applied in many states to municipal nominations. The result has probably been to increase the power of the regular party organizations, but to make them less responsive to the sober judgment of the party voters.

A further innovation was then tried in the shape of the official non-partisan or general primary, for which any number of candidates could be nominated, and the two or four receiving the most votes were entitled to places on the official ballot at the election, either with the designation they had at the primary, or, in some jurisdictions, without designation. This system is in common use.

While the system of representative party conventions is undoubtedly open to abuse, the substitution of the primary has not, in the opinion of the writer, effected any substantial improve-

ment. The experience of the southern states, where the state-wide party primary is practically the election, is of no value for communities, north or south, in which the primary system means two expensive and hotly-contested elections. The evils of the primary, except when applied in a community where a large majority of the voters expect to support the caucus nominees anyway, and the primary thus becomes in effect the election, are different from those which grew out of the delegate convention system, but they are none the less serious. One of them is the increased difficulty of inducing good men to become the active solicitors for office which the system requires, and to incur the expense, labor and annoyances of a double campaign. In the next place, in the open caucus or convention the office always could in theory "seek the man", and in practice frequently did so; whereas under the primary system it can never go to any but a voluntary candidate. A more radical vice of the primary election system is that under it all opportunity for open discussion — the great advantage of the old-fashioned caucus and the delegate convention, as also of the town meeting — is entirely lost, and the primary becomes the mere record of a choice based on motives and arguments which have not been subjected to the test of debate, and which may not even have met the test of publicity. At its best it substitutes the generally one-sided and often meritricious support of newspaper proprietors and writers for the free and open face-to-face discussion of men and measures, without which no form of popular government has ever been successful. Finally, the party primary makes citizens' movements and independent combinations almost impossible. Generally speaking no Democrat can carry a Republican primary; no Republican a Democratic primary; and all opportunity for the minority party to combine with the dissatisfied minority of the majority party in a non-partisan nomination is gone.

The writer regards the official primary election as in practice one of the least desirable of the political changes of the recent past;[1] and in the case of municipal politics there is fortunately

[1] For a further statement of his views on this subject, see the final *Report* of the Boston Finance Commission of 1907–1909, ii, pp. 194–196.

no need to consider it as an alternative to the party convention. If the party caucus and delegate convention are to be eliminated the party primary may as well go too. There is something to be gained by discarding the whole system of nominating municipal officers, whether by convention or in primaries, on the lines of state and federal party politics; and if party nominations are to be disregarded there is no need of a duplicate election. The primary may be dispensed with altogether, and candidates may be allowed to qualify by merely filing nomination papers. This plan eliminates some of the objections to the primary system, obviates some of the abuses of the convention system, is the simplest in operation, and seems to have worked fairly well in practice. It has been in force for some years in several Massachusetts cities, including Boston, as well as in many other states, and is the system adopted for the charters submitted in this book as that on the whole best suited to present requirements, if nominations by party-delegate conventions are to be dispensed with.

This system cannot be said to be free from objection; for it confines the choice of the voters to active candidates and eliminates the opportunity, often illusory but on the other hand frequently real and effective, for party counsel, debate and deliberation. It may also result in the election of a minority candidate; but if that be an objection it may be obviated better by the adoption of some system of preferential voting than by the machinery of a double election. There is only a single campaign, and the number of signatures necessary for a nomination may and should be sufficient to indicate a reasonably large popular demand for the candidate in question. The system is not intended to put an end to combined or party action in municipal politics; for under it municipal committees of every kind, or the state and national party committees if they wish, can wage as energetic a campaign as they please in behalf of the nomination or election of particular candidates.

d. *Election by districts or at large*

While in some of our larger cities, created by amalgamation out of distinct and physically separate communities, district representation within the city council may be necessary, the system would seem to have no logical application to homogeneous communities, large or small; and its almost universal use was one of the most serious defects of the old city council committee style of charter. The arbitrary and artificial electoral divisions led inevitably to a treatment of municipal questions on narrow-minded, petty and local lines, to a disregard of the larger needs of the city as a whole, and to expenditures which the voters as a whole would never sanction. This system has proved in the long run less responsive to the needs and desires of the people than the system of elections at large, besides violating the fundamental democratic principle that the larger the constituency the better the men elected.

A further objection to a representation based on districts which are purely artificial is that a city council thus constituted is sure sooner or later to become a body of men representing special interests ostensibly local in character, but in essence private, individual or corporate. It is a short step for a man who puts his district above the city to prefer other local interests to the general welfare; the interests, for instance, of individual contractors, office-seekers and public service corporations.

The present tendency is strongly towards the nomination and election at large of the members of the city council and school committee, and this principle has been adopted for the bills submitted in this book.

e. *Proportional representation and preferential voting*

In a system from which party nominations are excluded there is of course no room for minority or proportional representation.

As to the various systems of preferential voting which have been suggested and in which some thoughtful observers see great possibilities for the improvement of municipal government, it is to be regretted that we are left practically without sufficient

experience to guide us in determining whether the change is really a desirable one, and if so, which of the different systems should be adopted.[1]

One difficulty, as the writer sees it, with any system of the sort is the probability that in a short while the voters will be led to ignore the preferential privilege, and will vote only for the candidates they desire to elect. The plan might thus prove entirely unproductive of results. On the other hand it may be argued that even if the great majority should refuse to vote for more than one candidate, the other voters should be allowed to do so if they wish.

In advance of experience the writer hesitates to recommend the adoption of any of these systems either for the responsible executive or for the commission type of charter; but there will be found in the Notes an alternative draft, embodying this principle, of the electoral provisions of the charter.[2]

f. *The taxing and borrowing power*

The general basis of taxation is assumed to be a matter of general policy which will be regulated by the legislature upon uniform state-wide lines. The demand is sometimes heard for "home rule" in matters of taxation, meaning that each city should be given the right to levy its taxes as and how it pleases; but a change of this sort would require in most if not in all the states a constitutional amendment, and would lead to confusion and inequality greater than anything now known. It seems incredible that any such system could obtain a permanent place in our economic policy. Progress in the science of taxation is more likely to produce a state-wide uniformity than to increase the inequalities of the present system.[3]

The assessment, levy, and collection of taxes are matters which fall within the administrative part of municipal functions, and will be considered in subsequent chapters.[4]

[1] The Grand Junction system has been in force since 1909 only; and more recent yet is the experience of Pueblo, Spokane, Denver, Cleveland, Portland, Colorado Springs, Duluth, and other cities.

[2] See Part III, note 7. [3] See further ch. iv, *infra*, pp. 34–42.

[4] See ch. vii, *infra*, pp. 58–67, and ch. ix, pp. 76–78.

The important question whether the city should have an unrestricted power to raise money by taxation or by loan, and if not, what restrictions should be imposed upon the exercise of these powers, would, however, be regarded by most persons as a political question.

In most of the states the borrowing power is regulated by constitutional provisions which have proved very effective in restraining the improvident exercise of this municipal function. Where there is no constitutional provision on the subject the state legislature has generally endeavored to limit the borrowing power of cities either by general law or for each city in its charter or special laws. In fact, as towns and cities have in American public law no inherent power to borrow money, and can issue debt only to the amount and for the purposes authorized by the legislature,[1] the whole subject is always in the hands of that body.

Until quite recently, however, the laws regulating this question, whether contained in general statutes or in special charters or amendments, have been drawn with little study of the purposes and periods for which a city government ought to be permitted to anticipate the taxing power of its successors; and where the legislature has not been restrained by the constitution it has been altogether too willing to grant special exemptions from the debt limit laws. Some of the states which have not been wise enough to place a constitutional check upon the creation of municipal liabilities have consequently witnessed in the recent past a most dangerous expansion of the public debt.[2] The details of the pro-

[1] This is what the writer regards as the better view of a somewhat controverted question. An implied right to borrow money even if it exists is, however, of little practical value; for municipal corporations can only borrow money in considerable sums by means of long-term bonds, and it is well settled that they have no inherent or implied right to issue obligations of this character. See the general discussion of the subject in Dillon on *Municipal Corporations*, sec. 278–293.

[2] In 1895 the writer made an investigation into the effect upon municipal debt expansion of constitutional as contrasted with statutory debt limits. He found that between 1880 and 1890 the net municipal indebtedness of the sixteen states which had no debt limit, constitutional or statutory, increased 22⅛%; and that the increase in the ten states with a statutory debt limit was 18⅜%; while for the ten states which had a constitutional debt limit there was a decrease of 16⅛%. In three other states in which the taxpayers were protected by a constitutional debt

visions which a city charter should contain on this fundamental subject are discussed in chapter VII. At this point it is merely insisted that no sophistry about home rule or local self-government can justify a state in encouraging its geographical subdivisions to anticipate the taxes of succeeding years as is now done in Massachusetts and some other jurisdictions.

So far as the amount that may be raised by taxation goes, our state legislatures, while regulating by general law the basis of assessment and the methods of collection, have generally left the cities free to raise all the money they choose through the annual tax levy. In some states, however, it has been thought wise to limit, either by a general law or by special acts for particular cities, the amount that can be raised each year from taxes.

The system of statutory restriction cannot be said to have been an unqualified success. It tends to make the city authorities regard the legal maximum tax levy rather as a grant of money by the state than as a limit upon the right to compel public contributions from the people; it has encouraged a greater use of the borrowing power than would otherwise have been resorted to; and it has not prevented the legislature from changing the limit from time to time in the case of particular cities.[1]

The writer believes that there should be either no statutory limit for the tax levy; or that, if there is such a limit, provision should be made for an extra rate in any year in which the voters at a special election so decide; and that, in either case, the

limit during only a part of the ten-year period, there had been a decrease of $4\frac{3}{10}$%. The paper may be found in full in the *Boston Journal* of October 27, 1895.

A similar comparison made for the period which has elapsed since 1890 would, it is believed, furnish equally strong testimony to the wisdom of dealing with this subject by constitutional limitation. Figures prepared by the writer in 1909 for a legislative committee indicated that between 1890 and 1908 the aggregate net municipal debt of Massachusetts, properly computed, had increased 213%, or three and one-half times as much as the valuation of property for taxation, and five times as fast as the population.

[1] In Massachusetts, for instance, the tax-limit laws of 1885 have been changed about thirty times for some fifteen different cities. For the experience of these cities and other states in the matter of statutory municipal tax limits see the report of a joint special committee of the Massachusetts legislature, House Document no. 1803 of 1913.

borrowing power should be more closely defined and limited than is now attempted in any state.[1]

The charters in Part II are accordingly drawn with alternative provisions respecting the right to raise money by taxation, and with such limitations on the borrowing power as, according to the author's experience, should be applied by the legislature to all cities, whether there is also a constitutional limit or not.

g. *Direct legislation*

The reference to popular vote of certain questions of municipal policy has always been a feature of American city government. It has been applied quite generally to the question whether a town or village shall become a city; generally also to the question whether licenses shall be granted for the sale of intoxicating liquors; very frequently to the issue of loans for particular purposes; generally to the establishment of public gas, water, electric lighting and similar undertakings; and often, though not generally, to amendments to the charter of an existing city.

The writer believes that, except in the case of the largest cities, the use of this system should be continued for the decision of the license question; for the establishment of municipal ownership enterprises; as a check, in the smaller cities at least, upon loans voted by the mayor and city council; and for certain other purposes as appear in the charter drafts.[2] As for the charter itself or its amendments, it would seem better for the legislature to fix uniform conditions for the administration of all the cities within its jurisdiction than to submit each charter, amendment, or general law relating to municipal government, to a popular vote in each city.

As regards the so-called compulsory referendum, by which any order of the city council must upon petition be submitted to popular vote, the writer can see no possibility of public gain

[1] Except perhaps in Massachusetts under the legislation of 1913. See ch. 719 of the *Acts and Resolves* of that year; and ch. vii, e, f, *infra*, pp. 61–62, and art. VII, sec. 8 and 9 of the charter drafts.

[2] For instance, as a condition precedent to a large tax levy. Recourse to the referendum is provided by the charter drafts in art. II, sec. 7; art. VII, sec. 6; art. X, sec. 3, and in the alternative suggestion submitted in Part III, note 50.

from the application of this device to municipal administration. Whatever be the advantages of the referendum on petition as a general political principle, these advantages must follow from its application to such questions of general public policy as come before the legislature, and not from its use in the matters which come before a city council, ninety-nine per cent of which are not political questions in any proper sense.

It has been contended that a peculiarly appropriate field for the application of the compulsory referendum was the granting of franchises by the mayor and city council to public service companies; and undoubtedly a referendum on such votes would have prevented some conspicuous instances of fraud. It is, however, not at all certain that this would always be the case; and, in the opinion of the writer, a much better way exists for fixing the terms of corporation franchises than by giving full power to the local authorities, whether subject to a popular veto or not.[1]

Still more inappropriate would the referendum on petition prove if made applicable to orders of the mayor and executive departments, or to executive orders by the city council under the commission form of charter. The result of this device, as applied to matters of ordinary administration, would be inefficiency and chaos. If there are administrative questions upon which the voters as a whole have an intelligent and decided opinion, there is no reason to fear that their views will be disregarded under any system of representative government provided the terms of office are not too long.

What has been said of the referendum on petition applies with still greater force to the so-called "initiative". Both schemes are inconsistent with the "short ballot", and it has been demonstrated that they lead to the adoption, by the unreflecting vote at a general election, of measures which could not command a majority at a special election. The result is not a true expression of the popular will, but an unintelligent and unintended exercise of popular power. These schemes tend, moreover, to impair all sense of political responsibility, first on the part of the members

[1] See ch. v, a, *infra*, pp. 43–44.

of the legislature, ultimately on the part of the voters themselves. Repetition breeds indifference; and the initiative, in particular, may be said to have created a new political disease, a sort of electoral fatigue, which through the repeated votes upon a given question forced by a small percentage of the voters results in what is virtually a government by minorities.

If a true expression of the popular will at a given time is to be sought by the referendum or initiative, the vote must be taken at a special election;[1] but such elections if frequent would be impracticable except in the smallest communities, and the whole scheme is therefore of no value except as a means of securing for a minority of the people the passage of measures which the majority at a fair election would probably reject. And if applied to ordinary municipal questions these new devices could not fail to bring about a state of administrative paralysis.

In order that a referendum should reflect, even approximately, the popular will it should be so framed as to necessitate a deliberate choice on the part of the voter. Experience with the referendum and initiative demonstrates that the affirmative of any question has a better chance to be carried than the negative, and that the more obscure the form in which the question appears upon the ballot the more votes it is likely to get. Forms of question can also be devised which while apparently describing the proposition fairly give it, nevertheless, a certain color intended to facilitate its acceptance by the voters. There is in consequence a great deal of jockeying in our state legislatures over the form in which questions shall appear upon the ballot. This result should be deplored as much by the advocates of the referendum as by its opponents; for it must be clear that the ultimate fate of the referendum, considered as a matter of general political policy, depends on whether the people are satisfied that it furnishes them a fair means of registering an intelligent vote at the polls. The referendum will certainly disappear from our public policy if it is used for the purpose of obscuring the issue, and of allowing those who know nothing about the subject and do not understand what the question on the ballot means, to outvote the citizens who have

[1] See further ch. xi, *infra*, pp. 86–87.

taken the pains to inform themselves and know what they want. This defect, the writer believes, is insuperable and a fatal objection to the system; but the evil can, nevertheless, be mitigated by taking the greatest pains that every question which appears upon the ballot shall be stated as clearly and fairly as the nature of the case permits. The means to secure this end will, of course, vary with the nature of the question. In many cases putting the question in alternative form (a device originating, the writer believes in Massachusetts in the legislation of 1909) will go far towards accomplishing the desired object. Many issues are, of course, incapable of being stated in alternative form. In other cases the alternative is involved in the mere statement of the question itself; but wherever the comprehension of the voter will be aided by an alternative statement of the issue this course should be adopted.

It being impossible, of course, to prescribe this form or any other special form of question for all cases, the writer has thought that the rights of the voters would best be protected in the case of municipal referenda by allowing those citizens who are dissatisfied with the way in which the legislative body has ordered the question to appear upon the ballot, to appeal to the court for an order stating how the question shall be printed. The charters in this volume contain a provision to this effect in section 7 of article II (p. 109). The scheme is new, the writer believes; but he can see no reason why it would not be an efficient protection against the one-sided mode of statement which the promoters of a popular referendum are apt to insist upon. The device can also be applied to constitutional amendments and other state referenda.

Nor has the writer been able to find a legitimate place in his charter drafts for the latest scheme of radical politics, a recall election upon petition for the elective officers of the city government. The thought behind this idea is either that an elective officer may occasionally prove so delinquent in the performance of his duties as to render it necessary to prevent him from completing his term; or that the people cannot be trusted to elect reasonably honest and competent officials. The first of these dangers can be met by

providing terms of office which are not too long, and by the adoption of such administrative provisions as will prevent the grosser forms of fraud and waste, far more easily than by the irregular and uncertain operation of the "recall." The validity of the other proposition the writer, for one, is unwilling to concede. He prefers to assume that his fellow-citizens are still competent in the long run and on the average to elect representatives who are able to administer honestly a properly-drawn municipal charter.

In practice, moreover, as soon as the possibilities of the "recall" become understood by the professional city politicians and the special interests, it can hardly fail to be used as a means of intimidation and blackmail. One set of men will furnish the political machinery, another set the money; and we shall have a government for special interests and classes rather than a government for the people to a far greater extent than is now the case. We can be fairly certain that in the long run the "recall" would work rather as a practical hindrance to good government than as a theoretic obstacle to bad government.

The truth, as the writer sees it, about these new devices is that they are a sort of reversion to a type of democracy which proved a total failure in the land of its birth two thousand years ago; that they are inconsistent with the theory of representative democracy which was invented by the people of this country for the management of their public affairs; and that the basic thought underlying the advocacy of them at the present time is either an unwarranted disbelief in the capacity of the American people to elect competent and faithful officers and representatives, or an unreasoning intolerance of the deliberation required for all permanently useful legislation. Whether this be true or not of government in the proper sense, the writer is convinced that as applied to matters of local administration the adoption of the compulsory referendum, the initiative and the recall, would undo all the reforms of the past thirty years, and would make good city government in this country impossible. The effect of them, if actually made use of, would be to keep the people voting all the

time about somebody or something, to demoralize the public service, and to increase the inefficiency and waste which are now the chief evils of city government. Like many other ideas of foreign origin, they are wholly unsuited to the administration of municipal business under the political conditions which obtain in this country.

CHAPTER IV

Relations with the State

The adjustment of relations between the city and the state offers a most promising field for progress in the science of municipal government.

While American cities have always in theory been regarded as the mere creatures of the state, their treatment in practice has too often been an inconsistent mixture of *laissez faire* and factious interference. They have been permitted on the one hand to administer their affairs in the private interest of local politicians and contractors with scandalous results; and on the other hand they have so often been the victims of ill-considered interference by the state legislature, to the ultimate benefit of state politicians and contractors, that very extreme views of the benefits of municipal home rule are frequently advanced.

Political platforms often demand for towns and cities an independence of the legislature which would amount practically to a local autonomy; but the arguments advanced in support of this idea generally rest either on ignorance of town and city history in this country, or on a childlike faith in the value of a phrase. The serious consequences of this policy of disintegration, if actually carried out, can readily be imagined; and the experiment is warranted by nothing in the history of this or any country.[1] While there are perhaps one or two cities in the country, the position, size and wealth of which might justify their erection into a sort of *imperium in imperio*, the general adoption of such a policy and its application to all cities with their artificial and ever-changing boundaries would inevitably lead to inter-municipal jealousies and conflicts, and internally to methods and conditions worse than anything yet known.

[1] The writer can find nothing in the experience of Missouri and California with the so-called freeholder charters to justify the policy criticized in the text.

On the other hand to transfer, as some have advocated, to the state authorities as much of the local business as in foreign countries is controlled by the central government — on the theory that it is the duty of the state to see that its several divisions and departments are properly administered — would be a violent and impracticable departure from the theory of our public law. Whatever the advantages of centralization in the French or German government may be, the introduction of any such policy into our municipal system may be regarded as outside the range of practical discussion; but it may be well to point out that this policy in its most extreme form has obtained in a country where the suffrage is upon a basis as democratic as in the United States, and that it works satisfactorily. No intelligent and well-informed Frenchman would think of advocating "home rule" as a municipal cure-all.

It ought not to be difficult to lay out between these extreme theories a *via media* which will serve as a satisfactory boundary between the functions of the state and those of its territorial subdivisions in the matter of local administration, or to devise an effective and useful system of state supervision which is not inconsistent with our political habits. Some things at least would seem to be reasonably clear: first, that a matter does not become one of merely local interest because it affects the people of some particular city, for it may also affect in like degree the inhabitants of other cities; second, that in this country cities and towns have, both historically and in law, except where the constitution otherwise provides, no independent status, but are the creatures of the legislature with such powers and such powers only as that body may confer; third, that the lawmaking body is responsible for the municipal administration which its own acts require or tolerate, and has no moral right to pass any municipal law, whether optional or mandatory, unless it is itself convinced that the measure is expedient; and fourth, that there is a vast body of American experience and precedent to aid us in determining the respective functions in this country of the city and the state.

Assuming that such matters as the suffrage and the other fundamental subjects of legislation mentioned in chapter I, which affect the people as citizens of the state rather than as residents of some particular city, will be treated on general state-wide lines, we may divide the proper functions of the state in purely local matters into two parts: the imposition by law of sound methods of administration, and the direct supervision or control of the local authorities by state officials.

a. *Compulsory administrative methods*

It will scarcely be claimed that there is any legitimate field for the application of the principle of local option to the general rules for the conduct of municipal business. The appointment and removal of officers and employees, the preparation of estimates, budgets and accounts, the appropriation and borrowing of money, the letting of contracts, the purchase of supplies, the control of the public funds and the management of such business enterprises as may be undertaken by the city, are matters which should be governed for all cities by the same general principles, if sound ones can be discovered. There is no reason for any divergence of method in respect to any of these matters, and it is in these matters that the most good can be accomplished by general laws or special charters. It is in fact for the purpose of securing the sound administration of municipal business in these particulars that city charters and general municipal laws are commonly passed. The consideration of this function of the state government involves, therefore, practically the whole subject of this book, and there is no need to repeat or summarize at this point the writer's views as to the proper limits for legislative regulation of local administrative methods.

b. *Direct state control*

The writer has long been of the opinion, however, that the state should exercise, through its own officers and boards, a direct control over such local functions as experience shows can only be discharged, or can best be discharged, under the direct supervision of state officials. These matters are not numerous, and

they do not include, at least according to the writer's view, that department of municipal administration which has so frequently been placed under the direct control of the state, — the police force.[1] They are confined to the important subjects of loans, civil service appointments, public investigations, the regulation of public service companies, and the supervision of municipal business enterprises. The first three topics are considered in this chapter, the fourth in chapter V, and the last in chapter XI.

(1) *Loans*

First and foremost lies the question of municipal debt. That this subject presents a legitimate and necessary field for state supervision has been recognized by all the states in the form of frequent acts of the legislature, permissive or restrictive; and by most of the states through constitutional provisions or amendments. A large part of the time of our state legislatures is given up to a consideration of the requests of the various cities for leave to borrow money; but these requests are passed upon in a casual, unscientific way which has been ineffective to check the indefinite expansion of our municipal debt.

What is needed in the matter of loans, according to the writer's observations, is not only a constitutional limit upon the amount of money which the city can borrow, together with such statutory restraints upon the borrowing power as experience can suggest;[2] but also, what would perhaps be more useful than either, a permanent state board which, in imitation of the English system, should have a veto power over all municipal loans. The charters presented in Part II provide, in accordance with the present tendency of legislation, for a two-thirds vote of the city council, give the mayor an absolute veto, and contain other useful restrictions upon the borrowing power; but even these provisions will frequently be found inadequate to protect the rights of succeeding generations. Something more, in the nature of direct state

[1] In Baltimore in 1860; Chicago 1861; Detroit 1865; Boston 1885; Fall River 1894; and many other places. Other municipal activities have been treated similarly, as the New York city parks in 1857.

[2] See ch. vii, *infra*, p. 62.

supervision, seems to be needed. There is, moreover, a general similarity in the purposes for which different cities desire to borrow money, and the establishment of a state board having jurisdiction over all such loans would lead to greater uniformity of practice, as well as put an end to some of the more objectionable methods of borrowing now in use. If an absolute veto were thought to be too much of a restraint upon the local authorities, the state board could be vested with what is termed a suspensive veto — a device which would, we think, work in practice nearly as well as an absolute veto.[1]

(2) *The civil service*

The next most important function of local administration which ought, we think, to be under the direct supervision of the state is the municipal civil service. That all but the higher administrative officers should be selected upon the basis of merit rather than of partisan service or individual preference may be accepted as an essential requirement of sound municipal administration in this country; but opinions and systems differ, both as to the basis of selection and as to the body charged with the administration of the system.

A careful study of the various civil service systems now in force, and a fairly long personal acquaintance with the subject, have satisfied the writer that the municipal service should be under the supervision of the same board that has charge of the state service. The value of any civil service system depends not so much upon the powers of the supervising board as upon the manner in which they are exercised; and while partisanship may find its way into a state board, it is in the long run less likely to affect the operations of such a board than if the commission is a local body constantly subject to the pressure of local candidates and politicians. As to uniformity in the rules, high standards in the requirements, and the other elements that go to make up the efficiency of a civil service system, the advantage in the end must also be with the state board. Finally, a board ap-

[1] See Part III, note 49, for a draft of a clause intended to accomplish this purpose.

pointed by the local elective officers must inevitably tend to reflect more or less the views and political interests of the persons clothed with the appointing power — a situation generally, if not always, fatal to the genuine selection of employees upon the basis of merit. It may be asserted without hesitation that there are few, if any, successful civil service commissions appointed by the local authorities. The charters drafted in this book assume the existence of a state civil service board.

As to the methods of selection, those adopted by the Massachusetts Civil Service Commission (one of the first of such bodies to be established in the country and one of the best of those existing at the present time) have been followed in the charter drafts, so far as the subordinate employees are concerned. For the higher municipal officers a different plan has been adopted. For such officials the scheme of stated examinations with resulting lists of eligibles is not a plan calculated to secure applications from the kind of men who ought to fill these offices. Two precedents may be found in this country for the treatment of these cases: that adopted in the Boston charter amendments of 1909, under which no appointment by the mayor becomes operative until the civil service commission has investigated the qualifications of the applicant and approved them as sufficient; and that which has been termed the Kansas City system.[1]

The plan recommended by the author for general adoption and inserted in the charter drafts is a modification of the Kansas City plan. Under it the higher administrative officers are divided into two classes. The first consists of a few persons to be appointed by the mayor without reference to the civil service commission, to take general charge of what may be regarded as the departments in which the policy of the mayor for the time being may properly be felt. The other consists of the remaining higher officials, whose work is generally of a more technical character. These are to be selected in the first instance by the civil service commission as the result of an examination and report made by a committee of experts designated by that board for each occasion. The writer presents this plan in the drafts in Part II as the one

[1] See *First Annual Report* of Kansas City Civil Service Commission, 1911.

which, in his opinion, is on the whole the most likely to secure the permanent occupation of the chief administrative offices by competent persons.[1] The general control of the mayor over these officers is sufficiently provided for by vesting in him the absolute power of removal.

Those who prefer the Boston plan are referred to the act establishing it.[2]

Possibly a better plan than either of these may be devised. The important points to bear in mind are that the responsible executive type of charter does not necessarily involve unrestricted power in the mayor over the appointment of all the higher officials; and that, to the extent that this power is restricted, the coördinate or confirming power should not be vested, as under the old type of charter, in a board of aldermen or other local body, whether elective or appointed, but in a permanent state board.

(3) *Investigations*

The frequent necessity for the investigation of municipal maladministration by city, state, and non-official bodies is sufficient proof of the unsatisfactory character of our municipal service; and it furnishes a suggestion which, if worked out on safe lines, should prove an effective means both of preventing bad methods and of encouraging good ones.

In many of the states, city councils and their committees are authorized by law to investigate charges of fraud and other forms of official misconduct; but such investigations are necessarily either in the hands of the parties to be investigated or their political friends, or in the hands of their political opponents, and are thus pretty certain to be conducted for partisan ends. Moreover, the constitutional authority of such bodies to compel the disclosure of evidence and the production of books from persons not connected with the city government is probably narrower than is commonly supposed.

[1] See also ch. vi, *infra*, p. 53.

[2] Massachusetts *Acts and Resolves*, 1909, ch. 486, sec. 9–11. As to the working of this plan during the past four years see *Report* of the Boston Finance Commission, January, 1914, pp. 17–19.

Investigations by non-official local bodies or self-appointed committees are likely to be still less effective in securing a disclosure of the facts.[1] The examination of witnesses at the bar of either branch of the state legislature is generally impracticable. The investigating power of the legislature must practically be exercised by committees or boards appointed for the purpose, endowed by law with the necessary authority and instructed to make reports which can be used as a basis for legislation on the subject. Investigations of this sort by special committees of the legislature have been common enough; but generally the committees are appointed as the outcome of a political contest and often too late for the best results.

In order that such investigations should be fair in methods and effective in results they must be intrusted to persons who are not concerned in the matters to be investigated, who are competent to conduct the inquiry, and who obtain their authority directly from the legislature. A permanent state board with authority to conduct investigations of this sort as and when requested by the local authorities, or by a sufficient number of citizens, would have many advantages, particularly if the same board were given the control over the issue of municipal bonds which it has been suggested should be vested in some state authority. The existence of such a board would also be of the greatest use in the development of a sound theory and practice in the art of municipal administration.

In the absence of such a board a special commission or committee must be appointed in each instance. If upon application of the local authorities, or of a sufficient percentage of the citizens, the governor of the state could appoint a committee which should have full powers of investigation and which should report its findings both to the city government and the state legislature, an investigating machinery would be created which would be free from some of the objections to such work when conducted by

[1] Investigations by the district attorney or the grand jury have sometimes been effective; but their scope is practically confined to alleged violations of the criminal law. By far the larger part of the municipal misconduct which requires investigation, exposure and correction is not criminal in the legal sense.

legislative or municipal committees, and which in the long run could not fail to be productive of beneficial results.

Such a provision may be put into any city charter, or engrafted by general law on all city governments; and a draft thereof will be found in Part II, section 3, article XI.

(4) *Street franchises* and (5) *Municipal ownership*

As already stated, the franchises granted by the city to public service corporations and the operation by the city of commercial enterprises should, in the writer's opinion, be placed, to a certain extent, under the direct supervision or control of state officials. This subject and the related one of municipal ownership are, however, so complicated as to make it desirable that a separate chapter should be devoted to them.

CHAPTER V

Relations with Public Service Corporations

Probably no questions of municipal administration in this country have led to more dissatisfaction and litigation than those connected with the regulation of the quasi-public corporations which are operated under special franchises for the use of the public ways. The opportunities, both official and professional, which the writer has had to study this subject as applied to gas, water, electric light and power, and street railway companies in this country and in Europe, have led him to the following conclusions.

a. *The terms of the franchise*

Franchises which are exclusive, or terminable by lapse of time, or upon purchase of the physical plant alone, are in the long run obnoxious to the public interest. If exclusive they may deprive the community of the benefit of competition and improvements. If non-exclusive but terminable on a day certain the public advantage is likely to be nominal rather than real; for, as has been amply demonstrated by the experience of England, the necessary effect of such a limitation is to deter investment in an enterprise which may have to be wound up before the expected profits have been realized. Options of purchase upon the ordinary terms of eminent domain are not open to this objection; but such provisions, while common in this country, are a mere specification of what the law is anyway, and are therefore unnecessary. Very long terms may also give the public the benefit of a tenure which invites the investment of capital as required.

The best form of franchise, so far as length and terms of purchase go, is, in the writer's view, the so-called indeterminable franchise; that is, a right to use the street which is terminable at any time by the legislature for such cause as it sees fit, and which, together with the company's physical property, may at any time, with the sanction of the legislature, be taken over through the exercise of the power of eminent domain. This is

the Massachusetts system, and it has worked fairly well from the standpoint of promoter, investor and customer. Under this plan the company either continues to enjoy its investment, including the franchise granted by the public; or parts with its property and franchises for their full commercial value at the time of expropriation; or loses its franchise but retains its property. Experience has shown that this last alternative, while a salutary check upon the arrogance sometimes shown by corporations in their dealings with the public, is so seldom invoked in practice without some provision for compulsory purchase that well-managed companies have generally had no difficulty in procuring all the capital required by the growth of the community and the progress of invention.

As to the public authorities in whom the power to grant or revoke the franchise should be vested, the main franchise or right emanates, in the Massachusetts system, exclusively from the legislature, and this is the only body which can revoke it. Minor matters, such as locations in particular streets, are often, both for the grant and the revocation, made subject to the assent of the local city council, or where this has two branches to the assent of the board of aldermen; but in both cases, that is, in the case of the original application and in the case of revocation, the company has an appeal from the local authorities to a state board, whose decision is final. In this state, as in some others, the public ways are regarded in law as laid out for the benefit of the people of the state as a whole, and the towns and cities through which the streets pass, although they generally provide the money for both laying out and maintenance, are held to have no proprietary interest in them, and no control over them except such as may be expressly delegated by the legislature. This principle of law has, with the aid of certain statutes, resulted in the system briefly described above, which has worked so well in comparison with other schemes of street and franchise law adopted in other states, that, in the opinion of the writer, it is worthy of general adoption.

As these matters are, by assumption, to be regulated by general law they require no mention in a city charter.

b. *The regulation of rates and service*

All persons and corporations whose business is charged with a public use are subject to regulation by the state legislature both as to rates and service. This power is sometimes exercised directly by the legislature; sometimes through a delegated power to the local authorities; and, according to recent and better practice, by state boards. The advantages of the last-mentioned plan are overwhelming, both as to fairness, reasonableness and uniformity of action; and therefore a city charter need contain no reference to the subject.

c. *Capitalization*

The capitalization of public service companies is a matter of vital interest to the public. For a long time in England and now generally in the United States, it has been under the control of state boards. The object of such control should be to see that stocks, bonds and other obligations are issued only to the extent reasonably required for the business, so that approximately the aggregate outstanding capitalization represents the actual amount of cash raised by the stockholders in stock, bonds or notes and put into the company's plant and business. It has been doubted whether the modification of this system by which new issues of stock must be sold at auction, as in England, or distributed among the stockholders at market value, as in Massachusetts, is in the public interest; but it has saved many a corporation from disaster.[1]

[1] A conspicuous illustration of the benefit of the Massachusetts system is presented by the recent financial history of the New York, New Haven and Hartford Railroad Company. The decline in the value of the stock of this corporation to less than par and the suspension of dividends in 1913 would have been avoided if the company, a bi-state corporation, had issued its securities under the Massachusetts law rather than under the Connecticut statutes. The sale at market value of all the stock issued between 1893 (when the market-value law was passed in Massachusetts) and 1911 would have brought $60,000,000 more into the company's treasury than was in fact realized from the stock.

On the other hand under the Massachusetts law the companies have often been forced to issue large quantities of stock at prices far in excess of intrinsic value. This is because market value was construed to mean the market price as determined

This subject also would seem to be a matter for general legislation rather than for a municipal charter.

d. *Limitation of profits*

The limitation of profits earned in conducting a public franchise business has been a frequent field for experimentation both in this country and in Europe. The fixed maximum dividend is perhaps the earliest device, but, unless the figure is placed very high, works as a bar to progressive management. A payment of a part of the profits, gross or net, to the state or local authorities is sometimes provided in express terms; and the same result is often secured indirectly through special contracts for municipal service. It is very difficult, however, to fix a percentage of gross receipts which will be fair to the company at the outset, and fair to the community later on if the business when developed proves the franchise to be of great value; and a percentage of net profits is dependent upon so many uncertain factors as to be a cause of disputes rather than of income.

The best profit-sharing plan known to the writer is that by which the part received by the municipality or the state (preferably the former if it pays for the cost and upkeep of the streets used) is dependent on the dividend paid to the stockholders. If the amount of capital stock and bonds is under public supervision and the stock must be issued for not less than par, and if the entire proceeds must be paid into the company's treasury (as under the Massachusetts system), a percentage of the net income based on the dividends paid — say, an amount equal to the dividends paid in any year in excess of five or six per cent — will automatically give the public its agreed share without embarrassing the management or offering any inducement to the company to divide profits in a manner disadvantageous to the other party to the contract.[1]

by sale in the stock exchange of relatively small quantities of stock. The law should have regard to intrinsic values, that is to the price which could probably be obtained for a large block of stock, rather than to the prices recorded in the stock market.

[1] See sec. 10, ch. 500, of the Massachusetts *Acts and Resolves*, 1897 — the charter of the Boston Elevated Railway Company.

If any such arrangement is concluded between a city and a public service company, the rates charged by the latter should still be subject to public regulation, for there are really three parties to the undertaking: the city in its corporate capacity, or the taxpayers at whose expense the streets have been built; the company to which the use of the streets has been granted; and the public which pays for the transportation or commodities furnished.

Where the commodity dealt in is sold by fixed units of consumption the plan known as the "London sliding scale" furnishes perhaps the most satisfactory basis for harmonious relations between the company and its customers, as well as a keen inducement to progressive management. Under this system, which presupposes public supervision of the company's capitalization and the issue only of so much stock or bonds as may be necessary, a specified unit price and rate of dividend are agreed upon to start with, and the subsequent increase or decrease of the dividend rate is made to depend automatically, by means of a specified ratio, upon the decrease or increase of the unit price. This system has been in successful operation for gas companies in England for nearly forty years, and has been applied to at least one large company in the United States. It would seem to be applicable as well to water supply, water power, or electric light and power companies, provided it is feasible to sell the current at a fixed price per thousand gallons, per cubic foot or per kilowatt hour.[1]

e. *Municipal competition*

Except in the rare instances where an exclusive franchise has been granted to a private company, municipal corporations may, when authorized by the legislature, engage in any business of the kind commonly intrusted to public service companies without paying any indemnity to these or first purchasing their property or franchise. It is customary, however, in such cases to provide

[1] See the writer's report on the "Public Regulation of Gas Companies in Great Britain and Ireland" (Boston, George H. Ellis & Co., 1905), and ch. 422 of the Massachusetts *Acts and Resolves*, 1906, which applies the principle of the sliding scale to the Boston Consolidated Gas Company.

for compensation to the private interests affected, either by compelling the city to acquire by private treaty or condemnation proceedings the property and franchises of the company affected, or by giving the companies the option of selling their property, exclusive of franchises, to the city at an agreed price or judicial valuation. The latter is evidently the better plan in the public interest, and in the absence of special circumstances, it is one that is not essentially unfair to the companies. It requires, however, very careful drafting. The longest valuation cases in the courts are probably those which have arisen under the careless and ambiguous language used in municipal ownership laws; and in the part of the charter drafts devoted to this subject special care has been taken to avoid all danger that if the city acquires a plant in this way it shall pay, directly or indirectly, for the company's franchise.

Municipal ownership, as it is called, is provided for by a general law in only a few of the states. The writer believes that every city should have the right to engage, under proper conditions, in enterprises of this character, and the charter drafts contain this power. It should not, however, be exercised hastily, and the provisions intended to secure deliberation and intelligent action in this matter will not, it is hoped, be regarded as too restrictive. The difficulties and dangers of municipal ownership, moreover, do not cease with the acquisition of a plant. The operation by a city of a commercial business requires the greatest prudence and restraint. The acquisition and management of municipal property of this sort require in fact such careful treatment in a municipal law or charter that they are made the subject of a special chapter in this book, to which the reader is referred.[1]

. . . . . .

As already explained, it is assumed in the charters herein presented that a state board exists with jurisdiction over the issue of capital stock and bonds, over the rates charged by public service companies, and over the locations granted or revoked by

[1] See ch. xi, *infra*, pp. 82–89.

the local authorities, substantially as in the Massachusetts system.

The writer is under no illusion concerning the infallibility of such a board. State commissions do not always regulate as they should, and they have often been the means of perpetuating abuses which but for their existence would have been done away with by the legislature. On the other hand most of the public service boards in this country, as well as the similar instrumentalities of foreign governments, have performed their duties well, and the system must now be regarded as a fixture of municipal administrative policy all over the world.

CHAPTER VI

Administrative Provisions — Officers and Employees

This and the succeeding five chapters are devoted to the administrative clauses of a city charter or general municipal law; meaning those provisions which relate to the organization of the executive work of the city and the conditions under which it shall be done, and which, speaking generally, may be made a part of any city charter, regardless of general type or political features.

As the chief aim of this book is to serve as a handbook for practical municipal legislation, the sections devoted to the administrative provisions are regarded by the author as the most important. Except as indicated in the Notes, they are based on his personal observations and experience, official and professional, during the past twenty-five years. While he is far from assuming that these provisions embody a plan which is certain to secure good government, he is reasonably confident that, if adopted in their integrity, they will make some of the grosser forms of waste and corruption impossible, will keep down expenditures, particularly by way of loan, and will render the municipal service in all its branches more efficient, progressive and responsive to popular needs than the methods of administration with which our citizens are generally familiar.

The general plan of these administrative features is explained in this part of the book, while further details will be found in the Notes.

a. *Organization of the executive department*

The first problem connected directly with the transaction of the city business relates to the number and dividing lines of the departments among which the conduct of it should be divided. This is, to some extent, a matter of local convenience, dependent upon the size of the city and the nature of its special activities; but the general tendency is to create too many departments,

thereby increasing the difficulty of coöperation between them and the ease with which the public moneys may be diverted from the most effective use. Incidentally, the more departments, department heads and other salaried officers, the greater the number of rewards for political service in the average American city. To secure the greatest simplicity, coöperation and responsibility the number of departments and department chiefs should therefore be as small as possible. For a city of 100,000 inhabitants more or less, an organization such as is provided in section 1 of article VI of the charter drafts ought to be ample. Larger cities might require more departments or chief divisions, but not many more; and smaller cities might get along with a smaller number. The plan suggested, if applied with only minor changes to almost any of our cities having 100,000 inhabitants or more, would result in a large reduction in departments, in the elimination of many unnecessary officers and salaries, and in a much-needed simplification and concentration of business.

Uniformity is a desirable thing for administrative as well as for statistical purposes, and the writer has at various times had occasion to consider the different schemes of municipal organization adopted by the United States Census Bureau. These plans are faulty in not being based on the customary legislative requirements of city government in most of the states, and are otherwise objectionable. They have been found by the writer, as well as by the officials of our larger cities, to be entirely impracticable as a working scheme of organization.[1]

The organization recommended in this book provides for seven main administrative departments, the law, treasury, public safety, public works, municipal property, public charities and accounting departments; and for three departments the duties of which consist in part of executive work and in part of the semi-judicial administration of certain state laws, viz., the election, assessing and license departments. These ten departments, with the mayor's office, the city clerk, a library department and a penal institutions department, wherever there is need of the latter, are to transact, under the guidance of the mayor, the entire exec-

[1] See further ch. x, *infra*, pp. 80–81.

utive business of the city. The police, fire, health, building supervision, and weights and measures services are to be divisions of the department of public safety; the streets, sewers, parks, playgrounds and engineering work are to be in charge of branches of the department of public works; while the water supply and other forms of municipal enterprise prosecuted mainly or in part for revenue, such as gas works, electric light plants, street railways, subways, etc., are, where they exist, to be separate divisions of the department of municipal property. The diagrams on pages 54 and 55 show in graphic form the organization of the city government provided in the charter drafts.

b. *The chief administrative officers*

The writer's experience leads him to believe that each department should, in the interest of efficiency, responsibility, and economy in salaries, have a single officer at its head, not a board or commission, unless there are quasi-judicial functions to discharge; in which case, in the interest of justice, the department, or the judicial powers of it, should be vested in a board, the members of which need not exceed three in number. The charter drafts accordingly provide for a single head for the departments of law, treasury, public safety, public works, municipal property, penal institutions and accounting, and for each division of the departments of public safety, public works, public charities and municipal property; while the duties of the assessing, election and license departments are vested in boards consisting of three members each, and the judicial powers over the public health are to be exercised by the commissioner of public safety and two of the division heads of that department sitting as a board of health. The library department, if there is one, stands on a peculiar footing and can probably best be managed by an unpaid board of trustees; and the same is true of the public charities department.

The chief executive officers are expected to devote their entire time to the city's work and their salaries should be fixed, in the usual way, by ordinance; but the trustees of the library and public charities departments, the assessors, the license and elec-

tion commissioners, and in smaller cities perhaps some of the other officers such as the city physician and the city solicitor, should not be required to give their whole time.

c. *Mode of appointment*

As already explained [1] the higher administrative officers are divided into two groups: one of which, so far as appointments go, is within the absolute power of the mayor, while the members of the other group are to be selected by the mayor from persons who have been found by independent examiners to be qualified. It is provided that the mayor shall have full power to appoint the department heads, except the auditor, treasurer and assessors; while these officers, as well as all the division heads, are to be selected by the civil service commission in the first instance. The men in charge of the main administrative departments would be appointed by the mayor as his executive officers and advisers, and would constitute a sort of cabinet. The division heads in charge of the actual work as well as the heads of the auditing, treasury and assessing departments would be under his general supervision and control; but to secure expert knowledge and permanency of tenure these officers must be selected from a list of qualified candidates secured by a process of special examination.

d. *Subordinate employees*

These are to be selected under the regular rules of the civil service commission, presumably according to the common practice of examinations and lists, but subject to such other rules as the commission may from time to time establish.

e. *Removals*

No effective discipline is possible, in public any more than in private work, unless the superior officers have the full power of removal; and this is especially important in a charter intended to vest complete responsibility in the executive officers of the city. The appointing authorities are accordingly given the full power of removal.

[1] See ch. iv, b (2), pp. 38–40.

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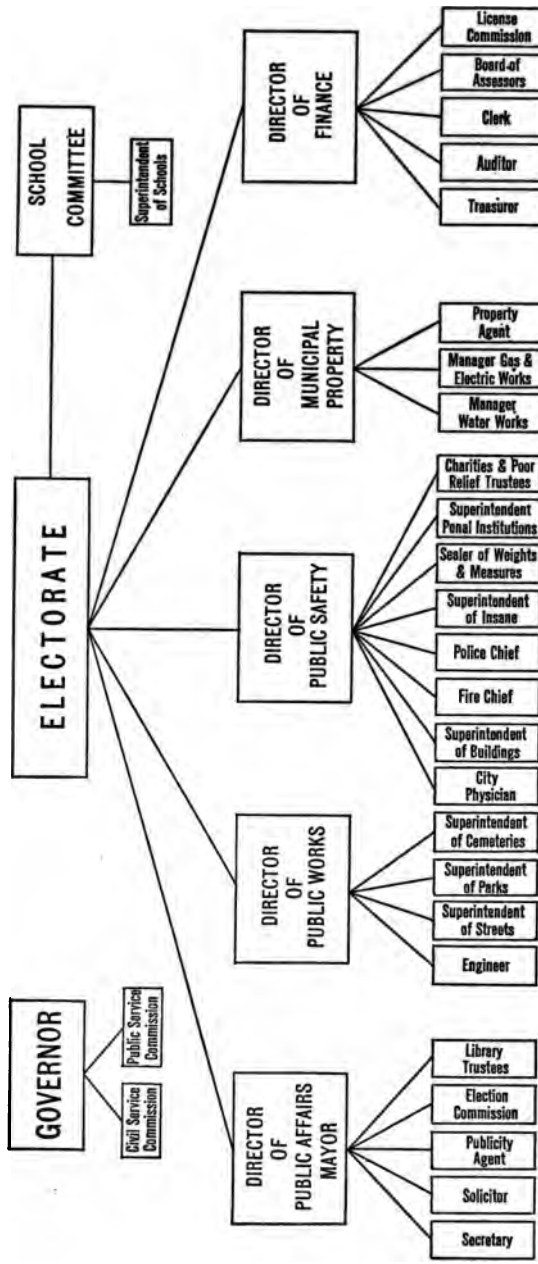
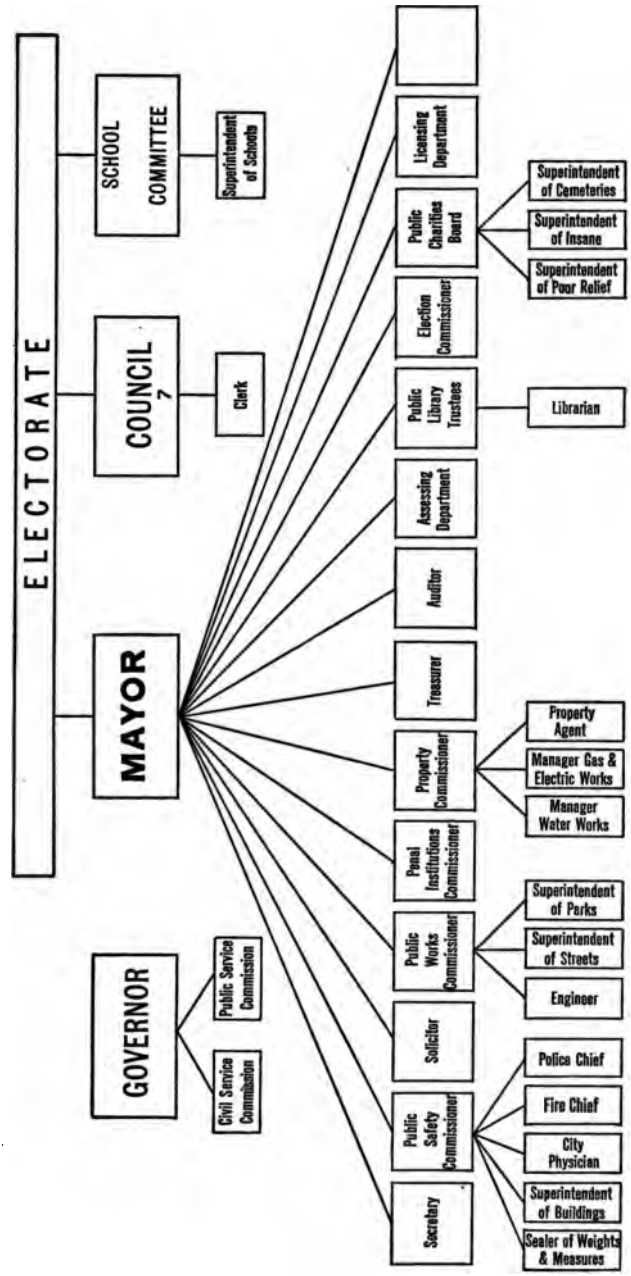


RESPONSIBLE EXECUTIVE TYPE



To obviate the injustice of arbitrary removals without opportunity for defense, any person removed is given an opportunity to state his case upon the official records of the city, and permanent employees of the fire and police divisions are entitled to a trial before a department board; but in all cases the decision of the executive authorities is to be final. The right of a discharged employee to a judicial trial is inconsistent with discipline and department efficiency. What is perhaps the most conspicuous administrative failure in the world, that of the police force of the city of New York, is beyond question due to the absence of an effective power of removal.[1]

The power of removal, together with the power of selecting arbitrarily the principal heads of departments, makes the mayor the real political head of the city and generally responsible for the proper conduct of its affairs; while the selection of the working division heads upon the plan recommended puts the actual work as much in the expert hands where it belongs as seems possible under existing conditions.

[1] See also Part III, notes 33 and 34.

Since these words were written they have been confirmed by the refusal of Col. Goethals, the chief engineer of the Panama Canal and one of the greatest administrative officers of the age, to undertake the reform of the New York police department unless the legislature would vest in the commissioner an effective power of removal. The legislature declined to make the change, a fact which illustrates the political difficulty in getting good government for our larger cities. In Boston, where the Police Commissioner has a practically unrestricted power of removal, the police force has been conspicuously free from the arbitrary and corrupt misconduct which has so long disgraced the New York department.

The following quotation from Col. Goethal's letter to the Mayor of New York, under date of January 14, 1914, gives his opinion on this question as follows:

"Attractive as your offer is, I would be obliged to decline it so long as the present law remains in force by which removals from the police force are subject to review, with decision based on legal evidence. In public work of any kind efficiency can be secured only when the service of those engaged in it is satisfactory to superiors, and while I fully believe in the right of every man to have a hearing, the decision of the superior as to the character of a man's service should be final.

In cases where a man whose services have not been satisfactory can be reinstated by a court of review, the effect on discipline and efficiency is most injurious. It undermines authority, leads to insubordination, tends to destroy the loyal coöperation which the executive authority must have to secure results, and makes his tenure of office impossible."

f. *Residence as a qualification*

A large amount of the inefficiency, waste and corruption in our municipal government is traceable to the practice of insisting upon local people for the local offices and work. Ostensibly a plea for " home rule " it is indefensible as such, for if better men can be found elsewhere the citizens who pay are entitled to their services; but in fact this argument is generally a mere cover for political favoritism and local graft. Such discriminations against the public interest should be prohibited both as to employees and contractors. Where, however, a non-resident has been selected for a more or less permanent office it seems reasonable, in most cases at least, that he should become identified with the affairs of the city to the extent of taking up his residence there.

CHAPTER VII

Administrative Provisions (*continued*) — Appropriations, Taxes and Loans

In conformity with the views previously expressed [1] the charters are drafted upon the theory that the mayor and city council may appropriate such sums as they please without reference to the effect upon the tax rate; while for states or communities which prefer a statutory limitation, an alternative clause is inserted which provides that the tax levy shall exceed a certain percentage of the valuation of property only after a referendum on the question, and in that case by only so much in excess of the tax limit as may be voted.

So far as the borrowing of money goes, too many restrictions and checks cannot, in the opinion of the writer, be placed upon the exercise of this function, particularly if there is no tax limit. Besides the constitutional limitations which the history of this country has shown to be both necessary and effective, every legislative device which experience can suggest to avoid the improvident exercise of the borrowing power should be inserted in the charter.

a. *The annual estimates*

These, before submission to the appropriating power, should be revised by some independent and more or less permanent officer, such as the city auditor; for the natural aim of each department is to secure for its work the largest possible share of the tax levy. After revision the estimates should be sent to the mayor and city council, together with the city auditor's estimates of income, and the corresponding figures for the income and expense of the preceding year. The appropriations recommended should, for the sake of comparison as well as for other reasons, be divided sharply into such as are for ordinary current depart-

[1] See ch. iii, f, *supra*, pp. 25–28.

ment purposes and can with propriety be defrayed only from taxes and income, and such as are for permanent improvements which may with propriety be met either from annual receipts or by loans.

b. *The annual budget*

If, in accordance with the views already expressed, the mayor is to have full concurrent power with the city council over the expenditure of money, it would seem to make little difference whether the annual appropriation bill originates in the city council or with the mayor. The former practice would conform to the custom of our state legislatures and of Congress, as well as to the earlier view of the prerogatives of the English Parliament. It has also, until quite recently, been the invariable practice in American cities. In other countries, however, the budget originates with the executive; such is now in effect the practice in England where the ministry for the time being (which has become the executive power) prepares the budget; and the custom has been strongly recommended for general imitation by the cities of this country. It has already been adopted by many of them, and is the plan recommended by the writer as more likely than the reverse process to secure prompt and intelligent action upon a bill which ought to be passed as early in the year as possible.

The mayor, after receiving the department estimates and the auditor's figures and recommendations, should send his own recommendations, in the form of a definite bill or budget, to the city council. The subsequent proceedings are matters of detail which are more fully treated in the charter drafts and Notes.

There is a difference of opinion as to whether the appropriations for current expenses should be made in lump sums for each department or division, or upon the " segregated budget " plan. The tendency of the latter system is to put too much detail into the budget and, especially under a charter which gives the mayor a qualified power of veto only, to transfer the control of the executive work of the city to the city council. The writer has had experience with both systems, and prefers the lump sum budget; but, under a charter which gives the mayor full concurrent power over the appropriations, the danger that the city council will seek

to interfere with the executive work by misuse of the power to itemize the department expenditures is not so great. Under a charter of this type it may well be left to the mayor and city council to adopt such itemized form of budget as they see fit to prescribe by ordinance; and the charter draft contains a provision to this effect.

c. *Transfers*

The subject of transfers is one which must be covered in the charter, as otherwise an opportunity exists to construct the annual budget in a way which will meet with popular approval, and subsequently to provide money for less meritorious purposes by means of transfer orders which do not secure the same publicity. This is a scheme which has frequently been resorted to by unscrupulous mayors and city councils, and should be made as difficult as possible without prohibiting such transfers as are reasonable or necessary.

d. *The tax levy*

The preparation and issue of the order or warrant authorizing the tax levy is largely a matter of computation and can safely be confided to the board of assessors, with instructions to include so much of the annual budget as must be raised from taxes, and all other items, including state and county taxes, interest and debt requirements, that must be met by taxation. In ordinary practice the annual tax warrant is passed by the city council; but the preparation of this document is a purely ministerial act, and to insure accuracy had better be intrusted to the appropriate executive department. Moreover, if the duty of issuing the tax warrant is lodged with the assessors, compliance with the law is easier to secure by mandamus than if the parties in default are a legislative or political body. As stated in chapter III, the charter drafts assume that there is no statutory tax limit; but an alternative clause is submitted which provides a limit which may not be exceeded except by a referendum.[1]

[1] See *supra*, pp. 27–28, and sec. 6, art. VII.

e. *Purposes and terms for which money may be borrowed*

Cities have by law no inherent power of borrowing money;[1] but our state legislatures have usually conferred upon them a borrowing power coëxtensive with the taxing power. That is, a city can generally borrow money for any purpose for which it can levy taxes. The abuse of this power is one of the worst, because the most lasting, of the evils of municipal government as hitherto carried on, particularly in states which have not had the prudence to establish constitutional limits for municipal debt. To put an absolute end to these practices by law would seem to be impossible without crippling the finances of the city, as it is difficult to foresee all the occasions in which the credit of the city may legitimately be pledged; but much can be accomplished by specifying the general purposes for which money may be borrowed, and by limiting the duration of loans.

For instance, one of the commonest devices for easing the burden of a loan on the taxpayers of the present day, to the detriment of succeeding generations, is to postpone the maturity of the bonds to a date more remote than the life of the improvement for which the money is to be used. Twenty or thirty-year loans for pavements which wear out in ten years or less may be regarded as the type of this kind of municipal financing; and it would seem possible to prohibit this practice by fixing the maximum terms for loans.

In accordance with the foregoing views the charters in Part II contain a specification of the purposes and periods for which municipal loans may be issued. There will, the writer thinks, be little question as to the purposes to which the borrowing power is restricted; but the loan periods provided may be regarded by some as too short. This may perhaps be true of particular communities; or for an improvement, such as a macadam road, which in some particular locality may be used very little. For the average city, however, the periods suggested are, in the writer's experience, none too short.

[1] See *supra*, pp. 26–27.

f. *Other checks on the borrowing power*

Not only should the mayor have full concurrent power over loans and items; but in a matter of this importance special provision may well be made for more than ordinary deliberation by the city council. The charter drafts provide accordingly that a loan order must be read twice with an interval between the two readings sufficient for public action.

A statutory debt limit is also provided, for what it may be worth, for cities in states which have no constitutional limit for municipal debts. A clause for a state board with a suspensory veto over municipal loans will be found in Part III, note 42.

g. *Forms of loans, sinking fund and serial*

The principal question arising under this head is whether the loans shall be issued on the sinking fund plan, by which all bonds of the same series fall due at the same time, and the payment of the principal is secured by annual contributions from taxes to a sinking fund and the accumulations of this fund through investment; or on the annual installment or serial plan, by which a certain part of the principal of each loan falls due each year and is included in the tax levy. The second plan does away with the machinery and dangers of the sinking fund system and is much to be preferred. When first adopted municipal bonds issued in this form did not bring quite as high a price in the market as if they had been issued under the then universal sinking fund plan; but now that the serial form of state and municipal bond issues has become common it is understood that these bonds sell as well as the older form.

It is a mistake to think that the city saves any money in the end by the adoption of the serial plan; for, given the same assumptions as to rates of interest and accumulation, the aggregate payments will be the same on either plan.[1] The argument

[1] If the sinking funds are assumed to accumulate at a rate greater than the rate of interest on the bonds, the advantage is with the sinking fund system; but if the rate of accumulation in the sinking fund is assumed to be less than that paid for interest on the bonds the serial system will cost the city less. The proper assumption to make is, of course, that the two rates are the same; and on this hypothesis

that a city saves money by the serial system has been earnestly advanced by intelligent supporters of this reform; but this argument is a complete fallacy. The advantages of the serial loan system are not financial, but political or administrative.

The great merit of serial bonds over those secured by a sinking fund is the avoidance of the waste, losses and mismanagement to which, in many different ways, the sinking fund system is always open. Among the more obvious of these abuses the following, taken from the personal observations of the writer, may be noted.

The legislature in authorizing municipal loans sometimes fails to provide that a sufficient sum shall be paid annually into the sinking fund; sometimes provides no means of enforcement if the city omits to make the payments; sometimes fixes a maximum annual payment which is insufficient to sink the debt; sometimes by fixing an inadequate minimum annual payment encourages the city to pay this amount and no more; sometimes deliberately sanctions the postponement of all sinking fund payments for a term of years; sometimes authorizes the temporary suspension of them; often omits to provide that premiums shall be paid into the sinking fund; and frequently authorizes the diversion of the funds to current expenses and other uses. These may be termed mistakes of legislative theory.

The first public water supply act in the New England states and one of the earliest in the country,[1] although providing that the rates should be fixed with the idea not only of keeping down the interest on the bonds but of ultimately paying the principal,

the aggregate cost to the community is exactly the same by either plan. A million dollar, three per cent, twenty-year loan, for instance, involves on the serial plan direct payments by the city, on account of principal and interest, of $1,315,000, while on the sinking fund plan the payments would amount to $1,334,426. This is not the whole story, however, for in the earlier period of the loan the payments on the sinking fund plan are less than on the serial plan, while in the later years the converse is the case, and the value (or aggregate interest) of the differences, compounded at three per cent, amounts to $31, 461 on the sinking fund plan as against $12,035 on the serial plan — a difference of $19, 426, which exactly offsets the difference between the direct payments by the city on the two plans.

[1] The Cochituate water act for the city of Boston, Massachusetts, *Acts and Resolves*, 1867, ch. 167.

added that this should be done only so far as the same may be "practicable and reasonable." The act provided that if the rates were insufficient to pay the accruing interest they might be increased by appeal to the courts so far as necessary to meet the interest "and no farther," and that if the rates produced more than the interest requirements they could be reduced upon such appeal. Fortunately the authorities of the city of Boston had sense enough to pay no attention to these provisions; but as this statute served as the basis for many other municipal water acts the astonishing absence of all practical provision for the payment of the debt had an unfortunate effect upon public water finance throughout the state.

Another legislative error very common in municipal water acts is the provision that there shall be an annual payment into the sinking funds "of at least one per cent" — a sum grossly inadequate to sink bonds of the length usually issued for municipal water works. With such a statute in front of them city and town authorities have quite generally issued twenty-year bonds, put one per cent into a sinking fund each year in compliance with the law, and when the bonds matured found that the sinking funds were only about one-third full.[1]

Errors in administration are more frequent yet. Defalcations sometimes occur; the banks of deposit sometimes fail, and these banks are often selected by favor; improvident loans are frequently made, and often to corporations in which one of the commissioners is interested; bad investments in mortgages and real estate are sometimes found; sometimes no payments at all are made from the tax levy; sometimes they are miscalculated

[1] The most flagrant cases of legislative folly in the matter of sinking funds known to the author are those presented by the Massachusetts metropolitan water act (Massachusetts *Acts and Resolves*, 1895, ch. 488) and the metropolitan park acts (Massachusetts *Acts and Resolves*, 1896, ch. 550, and *ibid.*, 1897, ch. 311), under the provisions of which the interest and sinking fund requirements, for the first few years in the case of the park loans, and for an indefinite period in the case of the water loan, were to be met by the issue of bonds. The writer took occasion to call these remarkable acts to the attention of the governor who had signed one of them, and was informed that it had to be done because the people of S—— (one of the smaller communities in the metropolitan district) insisted on it! His successor, however, secured the repeal of both laws.

for a long series of years; sometimes less than the necessary amount is deliberately paid in; sometimes the sinking funds are loaned out for other municipal purposes; sometimes they are permanently diverted to other uses.[1]

There is no branch of municipal administration in which more can be done, and done more easily, to secure good results than that which is charged with the payment of the city debt. It is no exaggeration, the writer believes, to assert that at least ten per cent of the aggregate outstanding municipal debt in Massachusetts at the present time is due to inadequate sinking fund methods; and that of the net outstanding municipal debt incurred for water, gas and electric works at least twenty-five per cent is due to the combined operation of improper sinking fund methods and inadequate allowances for depreciation. Probably no city in the country is free from some costly experience in the matter of sinking funds, and so far as this cause of loss is concerned the remedy is easy. Depreciation is a much more difficult subject and is treated separately in this book.[2]

There are three forms of serial bonds in use. Sometimes the legislature authorizes the public authorities to specify in advance the portion of the debt which shall be paid each year;[3] sometimes it is provided that the annual payments of principal shall be equal;[4] and sometimes that the payments of principal shall be so adjusted that the aggregate payment each year for principal and interest shall be the same.[5] The first of these plans is open to the objection that it permits the postponement of the payment of the greater part of the loan to the latter years of the period, and thus defeats the very object of the serial system. The second plan, known as the annual installment system, is the most common, the most simple, and perhaps on the whole the most satisfactory.

[1] There is a large volume of literature devoted to the evils of the sinking fund system. Most of it is referred to in an article by Mr. Alfred D. Chandler in the *American Economic Review* for December, 1913 (vol. iii, pp. 875–893). See also the *Reports* of the Boston Finance Commission, 1907–1909, ii, pp. 44–55 and 160–165.

[2] See ch. xi, *infra*, p. 85.

[3] See Massachusetts *Acts and Resolves*, 1903, ch. 226, and *ibid.*, 1912, ch. 3.

[4] See *ibid.*, 1882, ch. 133.

[5] See *ibid.*, 1908, ch. 341, and *ibid.*, 1909, ch. 486, sec. 26.

The third plan, sometimes called the annuity system, is also recommended by the writer.

The sinking fund system is both objectionable and unnecessary, and ought not to be adopted; but as the charter drafts are written for application to existing cities, and as most of these have sinking fund bonds outstanding, provision must be made for the continuation of the system, under such directions as experience may suggest, until these loans are paid.

Such provisions should include, first, a specific direction to pay each year from the tax levy the correct calculated amount necessary to sink the debt at maturity, notwithstanding that the bonds themselves, or the statute under which they were issued, may authorize smaller payments; and, secondly, a provision that the sinking fund shall be filled as rapidly as possible from the premiums received for the sale of the bonds, the proceeds of abandoned real estate, and the collections from betterments and assessments for public improvements. Even with these safeguards ways can be found to deplete the sinking funds unless they are administered with scrupulous integrity and a determination that they shall be sufficient to meet the debt at maturity, and as much sooner as possible.

There are some minor evils in the sinking fund system, as commonly practiced, which should also be avoided. The sinking funds should not, at least in the opinion of the writer, be invested in the city's own bonds; for such purchases add nothing to the security of the creditor beyond the obligation of the debt itself, and the practice encourages improvident borrowing.[1] Then some cities put sinking funds into real estate or mortgages; a practice which, while not open to the objections already referred to, is apt to lead to favoritism and financial risk. By far the better plan is to invest all the sinking funds (and all trust funds belonging to the city as well) in public securities, other

[1] Private corporations sometimes resort to the same illusory practice. The second largest railway company in New England, now on the verge of bankruptcy, maintains an alleged sinking fund for some of its bonds; but as the "fund" is composed in great part of other bonds issued by the company, the holders of the sinking fund bonds are but little better off than the holders of the company's unsecured bonds.

than those of the city in question, at their market value; and the charter drafts are framed accordingly.

Whether the serial or the sinking fund system of debt payment be adopted, the annual payments on account of both principal and interest should be automatically incorporated with the tax levy for the year, and not left to be included by the mayor and city council or not as they see fit; and provision should be made that the taxpayers may by appropriate legal process compel compliance with this requirement.

All premiums received on the sale of municipal bonds should be applied to the extinction of the debt. If a sinking fund is established the premiums should be put immediately into the fund; if the serial plan is adopted the premiums should be used to pay the installments of principal first maturing.

h. *Loans in anticipation of taxes*

Temporary loans for this purpose are, of course, necessary incidents of municipal finance; but if not properly taken care of at maturity they become a real, though not acknowledged, addition to the permanent indebtedness of the city. If they can be carried over the fiscal year, or renewed instead of paid, the temptation is to keep them as a surreptitious but permanent liability, and even to increase the amount of them from year to year.

All such loans should be payable, and should be actually paid, within the fiscal year; and no renewals should be permitted.

To cover the frequent case of a city which has allowed a so-called " temporary " loan of this character to become a serious liability, a provision is inserted in the charter drafts by which such obligations may be liquidated by annual payments from taxes extending over a period not exceeding five years.[1]

[1] For some idea of the extent to which the practice of carrying loans temporary in name but permanent in effect has been followed in one state, the reader is referred to the report of the Massachusetts Joint Committee on Municipal Finance, House Document no. 1803 of the year 1913. The correcting legislation passed that year, however, (Massachusetts *Acts and Resolves*, 1913, ch. 634), allows towns and cities which have outstanding demand loans and do not find it " reasonably practicable " to pay them out of the tax levy for 1914, to fund these loans by means of fifteen-year bonds issued in serial form. The period allowed for the correction of the financial vice illustrated by these so-called temporary loans is altogether too long.

CHAPTER VIII

Administrative Provisions (*continued*) — General Rules for the Conduct of Business

The more important provisions of this character which have been incorporated in the charter drafts relate to the letting of contracts and the purchase of materials, and to the prohibition of collusive transactions between the city officials and outside parties. Interference by the legislative with the executive department, and department expenditures in excess of the appropriations are also prohibited. Other relatively minor provisions will be considered in the Notes at the end of the volume.

a. *The letting of contracts and the purchase of supplies*

This fruitful source of corruption and waste may be made reasonably free from objection by noting from the experience of our American cities and the litigation on the subject in just what particulars contracts for municipal work have proved a source of waste and fraud, and by the adoption of practical measures to avoid the difficulties thus indicated.

In the first place, all contracts for materials or work should be in writing and should be invalid unless signed by the head of the department. If involving more than a certain sum, they should also be approved in writing by the mayor. Freedom to give out orders and contracts by word of mouth or over the telephone is doubtless a convenience, but it leads to misunderstandings in private business, and is entirely inadmissible in public work. If an oral order is really necessary in some matter not admitting of delay the department head will have no difficulty in getting the order filled by some responsible person who will do so in the expectation that a written order will follow. In all other cases there is no reason why the written instrument should not precede the delivery of the goods or the execution of the work.

Equally important is it to provide that all alterations in, or additions to, a written contract or order should also be in writing,

and signed and approved in the same manner as the original instrument. The most frequent cause of litigation growing out of the erection of buildings and similar work, whether on public or private account, is probably the claim for "extras"; and there is every reason to require that such claims should be evidenced by the same formalities as the original contract. The proper time to fix the amount and price of extra work is before it is done, not afterwards. While in dealings between private individuals complete immunity from disputes over extras cannot be secured in the manner suggested — because such a provision would interfere with freedom of contract, and a man cannot by any form of writing prevent himself from afterwards making an oral contract relating to the same matter — in public work this is fortunately not the case. The contracts of municipal corporations, as creatures of the state, are wholly subject to the legislative will. The legislature can accordingly provide that no claim for extras shall be valid against the city unless evidenced by the signature of the department head, and in proper cases fortified by the written approval of the mayor. Such a law has been in operation for some years in Massachusetts,[1] and has saved an immense amount of litigation. It imposes no real hardship on the contractor or material man, and blocks the way to an easy and much-used form of graft.

That all public contracts and orders for supplies should be based on competition has become a commonplace feature of our public law; but many of the requirements adopted have proved ineffectual in practice, and department heads are constantly striving to avoid or evade the law, either from dislike for the procedure of public competition, or from less excusable motives. While it is doubtless true that in some cases better prices can be obtained, or more responsible contractors secured, by private correspondence than by open competition, experience has amply demonstrated that the only road for public officers in this country to follow, in the letting of contracts and the purchase of supplies, is the open road of advertised competition.

[1] See Massachusetts *Acts and Resolves*, 1890, ch. 418, a law which the writer helped to draft.

All contracts for materials or work involving any considerable expenditure, say, more than $1000, should therefore be let only after public advertisement. The contents of the advertisement and bids, the formalities for opening the same, and other details may be left to the city council to regulate by ordinance.

Care must also be taken that the law is not evaded by splitting up an order or contract into several jobs of less than $1000 each — a favorite trick with dishonest or too complaisant municipal officers.

Pains must be taken in the next place to protect the city against collusive bidding. The department head should have the right to reject all bids and to re-advertise the contract. He should not have the right, of his own initiative or with the sole approval of the mayor, to award the contract to any but the lowest bidder; for the reservation of such a right enables the department heads or the mayor to evade the law for their own personal or political benefit, and has frequently been made use of for this purpose. Provision should be made, however, for the rare case when a bid, not the lowest, is really the most advantageous to the city, and this can best be done, or done with the least danger, by providing that a contract may be awarded to a person not the lowest bidder upon the written advice of the head of the department and of the mayor and by a formal order of the city council read twice with an interval of at least a week between readings.

State laws and municipal ordinances relating to this subject usually provide for a suspension, intended to be authorized only in case of emergency, of the requirement for the advertisement of contracts; but such a provision can obviously be used to defeat the law itself, and is in fact commonly so used. To draft a clause to meet this situation is not easy, but that contained in the fifth paragraph of section 1 in article VI, is believed to be adequate for the protection of the city, in the rare cases in which purchases or contracts of over $1000 in amount ought to be undertaken without advertisement. If the mayor must, in each case in which he has suspended the necessity for advertisement, forthwith make a public report to the city council that he has done so and must

state the reasons for such action, and if, as provided in article XI, section 1, he can be prosecuted for a deliberate misuse of this power, it is not likely that many contracts will be awarded or purchases made without advertisement in order to defraud the city or to favor his political supporters.

The final clause in section 1 of article VIII, making voidable every contract or purchase which is entered into in violation of the foregoing requirements is most important. Contractors will be reluctant to deal dishonestly with the city if they must take the risk of any departure from the wholesome rule of competition. Such a clause is not common in municipal legislation, but it is not unknown, and, in the opinion of the writer, should be a part of every city charter.

A special class of contracts consists of agreements for the performance of work of a continuing nature, such as lighting the public streets, collecting garbage, and so forth. The performance of such contracts necessitates a large plant, and a favorable price cannot be expected unless the contract is made for a period of considerable length. Such long-term contracts, involving as they do the appropriations and taxes of succeeding years, should not be left to the sole decision of the mayor and department heads. They are in the nature of executive work, it is true; but the work is of a peculiar nature, and only a small fraction of its cost will be incurred during the terms for which these officers are elected or appointed. It would seem that the approval of the city council may well be required as an additional check upon the negotiation of long-term contracts for street lighting and similar purposes. A clause to this effect has been adopted for some of our large cities, and is incorporated in the charter drafts contained in this book.

The drafts also provide against discrimination in favor of local contractors and material men. Such favoritism, though plausible at first sight, is in reality nothing but a waste of other people's money for the benefit of persons with political influence and is often made the cover for what in private work would be regarded as a downright breach of trust.[1]

[1] See also ch. vi, f, *supra*, p. 57.

b. *Work that should be done by contract*

More important even than the safeguards surrounding the letting of contracts, more important at least from the standpoint of economy, is the necessity of curbing the tendency to maintain an excessive payroll for the sake of doing by day-labor work which can be done as well or better and more economically, under contracts properly drawn and supervised. There is, of course, a great amount of municipal work which can only be done by day-labor, and in many cities merely this class of work is done by the city employees. In other places the tendency has been to undertake much more than this, and in some cities the day-labor payrolls have been swollen to such an extent as seriously to impair the efficiency of the entire municipal service. The trouble is not only that these employees are hired upon extra-commercial and even upon extra-union-labor terms in respect of wages and hours of labor, and that the work for this reason costs more than if done by responsible contractors; but the same political considerations which bring about the employment of these men lead to their retention when the work is done, and to their being carried on the payrolls throughout the winter and at other times when there is little or no work that can profitably be done even by contract. The system, being created for political reasons, must be administered on political lines, that is, for votes; and this leads to lack of discipline and general demoralization. The amount wasted in some of our larger cities for unproductive city labor, that is, on payrolls for which no return in effective work is given, is enormous,[1] and accounts in large part for the excessive cost and poor

[1] The reports of the Boston Finance Commission of 1907–1909 show that in the year 1907 stone crushed by city laborers cost two and three-quarters times as much as if bought in the market (i, p. 212); that brick laid for sewers by the city laborers cost from three to six times as much as if laid by contract (i, p. 267); that sewer construction cost twice as much (ii, p. 207); and that the collection of ashes cost 50% more than if done by contract (ii, p. 149). Worse than this was the discovery that notwithstanding an increase of 50% in the number of city laborers between 1895 and 1907, the amount of work done per man per hour was only one half what it had been during the years preceding that period (ii, p. 201). See these reports *passim* and particularly the summary in the final report of the commission (ii, p. 201, *seq.*).

condition of the streets, for the bad management of water works and similar enterprises, for the perpetual lack of money for schools, playgrounds, sanitation and other ever-present needs. It leads also to corrupt and dangerous dealings with the electorate. That some of the special privileges enjoyed by city laborers are justifiable, and that some city work can best be done by day-labor notwithstanding that it costs more than by contract, may be admitted; but there is no genuine labor interest that should demand, and no public interest that should tolerate, a system which, by bestowing improper favors upon a section or class of the laboring population, increases the cost and diminishes the amount of municipal service for all the rest. The root of this evil is nothing but partisan or personal politics, and, like other evils of like origin, may to some extent at least be corrected by legislation.

The charter drafts contain, in section 2 of article VIII, an attempt to regulate this matter, or at least to prohibit the administrative excesses to which the employment of labor tends, by prescribing the kind of work which must be done by contract and the kind which may be done by day-labor. The obvious line to draw is that between construction, on the one hand, and maintenance and repairs upon the other. The details are doubtless capable of improvement; but it is hoped that this section will in substance commend itself to our legislators, and that it will prove a practical corrective of the evil which it seeks to avoid. If in any case a labor force exists which it would be unfair to abolish, the prohibition can be limited to the taking on of new employees, leaving the present system in force only for those already on the payroll. The evil would in this way rectify itself in a short time.

c. *Prohibition of collusive profits*

At the common law it is not per se illegal for a municipal corporation to contract openly with its members; but the door to favoritism and fraud thus opened has been entered so frequently that in almost all the states such transactions have been prohibited by statute.

Much more difficult is the effective prohibition of secret or collusive dealings between members of the city government and municipal contractors and material men.

The clause contained in section 3 of article VIII is modeled upon the latest Massachusetts statute [1] on the subject with such modifications as will not hamper the conduct of city business simply because some member of the city government happens to be interested, as a stockholder or otherwise, in a contract for materials or service. A penalty for the violation of this clause is provided; but the main sanction of the prohibition is to be found in the provision that the contract itself may at any time before final payment be avoided by the courts upon petition of the mayor, the city council, or the taxpayers.

d. *Interference by the city council with executive work*

The value of the separation between the legislative and executive departments, contemplated by the responsible executive type of charter, will be largely impaired if the city council as a body can by vote or ordinance control the executive business of the city, or if the members of the city council are at liberty to exert pressure upon the department officers through their personal influence. Much trouble has been experienced from these two sources by cities which have adopted this type of charter, particularly when a large or bicameral city council has been retained; and under any system the administrative officers cannot do their full duty if subjected to the constant importunities of every one who has a voice in fixing the department appropriations and salaries.[2] The charter draft contains a prohibition of all interference, direct or indirect, official or individual, on the part of the city council or its members with the work of the

[1] See Massachusetts *Acts and Resolves*, 1909, ch. 486, sec. 8.

[2] For the difficulty, lasting over twenty years, experienced by the city of Boston in enforcing the spirit of the charter amendments of 1885 (ch. 266 of the Massachusetts *Acts and Resolves* of that year), notwithstanding the prohibition against interference with executive work contained in sec. 12, see the writer's Valedictory Address as Mayor of Boston, printed in Matthews, *The City Government of Boston* (Boston, 1895), pp. 168–173, and the *Reports* of the Boston Finance Commission, 1907–1909, ii, pp. 196–198.

administrative departments, including the appointment and removal of the regular employees, the employment of labor, the making of contracts and the purchase of supplies.

The charter draft vests, however, in the city council full concurrent power with the mayor over the salaries of the department and division heads, and all appropriations and loans. It also gives the council a check or veto power over certain administrative functions.

e. *The appropriations not to be exceeded*

A frequent source of extravagance is the lack of respect shown by municipal officers for the appropriations given them as a limit upon expenditure. The practice is too common of spending money, sometimes for purely political purposes, more often for objects in themselves desirable, in excess of the monthly rate of expenditures warranted by the appropriations, relying on the deficit being made good by the appropriating powers before the close of the fiscal year. This practice can, it is thought, be made difficult and dangerous, if not entirely done away with, by penalizing every intentional experiment of the sort which is not justified by some emergency. A clause intended to accomplish this result will be found in section 5 of article VIII.

CHAPTER IX

Administrative Provisions (*continued*) — The Assessment of Taxes

It is assumed that the general basis and subjects of taxation will be regulated by general law, presumably on uniform lines throughout the state. It seems also probable that the common American practice of taxing property upon its capital or market value, rather than on its income or annual value, will be adhered to, at least in so far as real estate and tangible personal property are concerned.

The valuation or assessment of such property is, however, an administrative-judicial function generally intrusted to local boards of assessors composed of persons who are seldom qualified by any sufficient experience for the task, and who are often actuated by political and other non-judicial considerations. The result has been that, although the statutes almost always provide that all property shall be assessed at its fair cash or market value, the greatest differences exist in the different states, and in the different cities and towns of each state, regarding the way in which these valuations are reached. A vast amount of discrimination, partiality and lack of intelligence will be disclosed by an investigation of the methods of assessment in almost any city in the country. Sometimes property is assessed at its supposed cost, sometimes at cost of reproduction, sometimes at value to the owner, sometimes at far less than it would sell for, sometimes for more; and all because of a willful or ignorant violation of the plain statutory injunction to take the actual cash, market or sale value of the property. Assessments are often made unduly low for some reason, more or less politically justifiable but none the less illegal, such as the desire to bring manufacturers or persons of wealth into the town; and on the other hand assessments are sometimes deliberately enhanced to make a lower tax rate or to provide a larger borrowing capacity. Such also is the

unconscious result of some of the methods of valuation adopted, particularly in the case of improved real estate.

It is believed that some at least of these evils can be corrected, and a greater uniformity of assessment secured, by prescribing with greater particularity than is generally attempted in our tax laws the methods by which the cash or market value of property is to be ascertained; and section 9 of article IX is an attempt to carry out this idea in a form appropriate either to a general law or (as here) to a particular city charter.

There is, first, a full definition, based on numerous court decisions, of " market value "; by following which the assessors ought to have no difficulty in avoiding some of the more obviously untenable ideas which sometimes control their work, such as actual cost of reproduction, value to the owner, etc., tests which may result in figures far below or much above the actual market value of the property.

There is in the next place a direction, based also on the decisions of the courts, for ascertaining the value of improved real estate. In most of the states such property is divided for purposes of assessment into land and buildings, and the assessors are expected to assess separately the land and the buildings, or to give one figure for the land and another for the land with the buildings on it. The main object of these laws is, of course, to secure uniformity in the assessment of the land and to avoid discrimination between owners of adjacent or similar lots. This object is readily accomplished by a separate valuation of the land, and there is usually little complaint of discrimination in land valuations; though in many places there may be a systematic underassessment. The separate valuation of the buildings is, however, a very different matter. Buildings differ from one another in construction, age, condition and suitability for their site; and the values of different buildings in the same neighborhood are seldom comparable, at least in the same exact sense that land or site values are. Moreover, in most cases the buildings, considered independently of the land on which they stand, have no actual or legal value whatever. In a country town a wooden frame house or barn situated near a highway may have a certain

cash value for sale and removal; but this is hardly ever the case with a brick, stone or iron structure. The separate or removal value of such a building is generally only its demolition value, and that is usually less than nothing. Buildings operate to enhance more or less the value of the real estate considered as a whole, but in most cases they have no independent value of their own. Where therefore a statute directs that buildings, machinery or anything else attached to the land is to be valued separately the amount by which the structures enhance the market value of the land considered by itself, is intended, — not their original cost, their reproduction cost, their removal value (unless this is greater than the amount by which they increase the site value), their value to the owner, or their value on any other basis. This has been repeatedly decided by the courts.

The failure to take these rather elementary considerations into account is the cause of much of the dissatisfaction with assessments for taxation. Instead of estimating, for instance, by how much the price the owner could get for the land and buildings exceeds what he could get for the land alone, of setting down the difference as the value of the buildings, and of considering the rents and profits of the property as a basis for estimating its sale value in its entirety, other considerations, such as the cost of the buildings, or their cost to reproduce — factors which may play an important part in the rental or capital value of the property, but may, on the other hand, be of little or no consequence — are used as the sole basis for valuing the building. This figure is then added to the value of the land, and the total parcel is assessed at a sum which may bear no relation whatever to the actual, economic, or legal value of the property as a whole. This stupid and illegal method of assessment is altogether too common. It is, in the writer's opinion, responsible for most of the overvaluations now so generally complained of, where these are not the direct result of a violation of duty for political reasons.

It would seem possible to avoid these inequalities by the specific directions suggested in the charter drafts to take income into account, and to treat as the value of the buildings the sum by which they increase the market value of the land.

CHAPTER X

Administrative Provisions (*continued*) — Accounts and Reports

The extent and character of the annual reports of the different departments may in general be left to the local authorities. Opinions differ much as to what is desirable in this regard, and it would be difficult to draw a satisfactory charter provision for general use.

There is one report, however, concerning the necessity for which, and for its comprehensiveness and accuracy, there can be no question. This is the annual report of the financial transactions of the city. That these transactions should be printed annually in complete, accurate and convenient form, every one will agree; but there is, unfortunately, no respect in which municipal practice is more varied or defective than this, and if the subject is left entirely to the local authorities it may or may not be handled properly. Hence, in drafting a model charter, every effort should be made to see if provisions cannot be devised which will insure the publication annually of a report disclosing in concise form, in sufficient but without excessive detail, and with absolute accuracy, all the financial business of the city during the preceding year, together with corresponding data for previous years.

The first thing to do would seem to be to draw up a list of the topics, information concerning which the annual report of the city auditor should contain. The list in section 7 of article IX will be found, it is believed, to include all the data needed for a general understanding of the present condition and past management of the finances of the average city. If in any particular case other data are required they can easily be inserted in this section of the charter; and the details of the report can be left to the auditor for the time being. The important thing is to

have the main financial data in available book form for inspection and comparison; and experience has shown that this end will not be attained if the matter is left wholly to the local authorities.

Another advantage in statutory provisions for the annual financial reports of cities is that by this means comparisons between the different cities of the state are facilitated. Some states have attempted to enforce a uniform system of municipal accounting, but the schemes hitherto selected have not been responsive to the legal or practical requirements of the case, and are not capable of exclusive use. Most of the "uniform systems" of municipal accounting invented by state or federal officials, including the series devised by the United States Census Bureau, divide the receipts and expenses by economic subjects; whereas a division by administrative departments is what is legally and practically necessary for actual administrative purposes.[1] Where, however, such a system exists the auditor's annual report should, it would seem, contain a recast of the financial operations of the year in the statutory form; and a clause to this effect has accordingly been inserted in section 7.

A provision is also inserted for a statement of the loans, if any, issued by the state, or county, or any other public body, which are charged in part or wholly upon the city, but which do not figure in the nominal city debt because not directly issued by the corporation. In some states public improvements of more or less magnitude are financed in this way, and the loans represent in effect a local debt; but the opportunity for statistical juggling thus created has proved too great to be resisted, and in one state at least loans of this character amounting in the aggregate to over $75,000,000 are entirely lost sight of as municipal obligations.

[1] Many of the distinctions and definitions in these systems are, moreover, extremely artificial, difficult of comprehension, and often economically unsound. For barbarous terminology and unintelligent definitions the publications of the United States Census Bureau set an advanced standard. There is little difficulty, however, in recasting in condensed form the annual receipts and expenditures of a city so as to conform to the requirements of any uniform system that may be adopted by the state; and the advantage for statistical purposes in doing so is obvious. See also ch. vi, a, *supra*, pp. 50–52.

They are omitted both in the state reports and the federal census from the aggregate of either state or municipal loans.[1]

[1] This is persistently done with the metropolitan debts in Massachusetts. These are essentially municipal debts because payable, both principal and interest, in the first instance by the cities and towns within the metropolitan district. Each town and city within the district is burdened with a proportionate part of these debts (now amounting, net, to about $60,000,000); but nothing indicates that fact in any statement of municipal indebtedness prepared by either the city, state or federal authorities. For a further explanation of the kind of annual financial reports contemplated by the charter drafts the reader is referred to Part III, notes 65 to 68, and to the discussion of the subject in the following chapter.

CHAPTER XI

Administrative Provisions (*continued*) — Management of Water, Gas, Electric Light and Similar Municipal Enterprises

No department of municipal administration has given rise to more criticism and dissatisfaction, both in this country and in England, than that which has to do with the management of those commercial or income-producing enterprises which in their earlier stages quite generally, and at all times quite commonly, are operated by private corporations, but which on the other hand are very frequently taken over and administered upon public account.

The motives for public ownership are various. Sometimes, as in the case of turnpikes and ferries, private operation becomes unremunerative or unprogressive, and the property is acquired by the public with full knowledge that it must be operated at a loss, or thrown open to general use without charge. Sometimes, as generally in the case of markets and water supply, the object is partly to bring about a reduction of cost to the consumer, and partly to secure improvements and public benefits which are too costly to be attractive to private capital. In other cases, as commonly when private gas or electric works have been acquired by the public authorities, the sole purpose appears to be to make money for the city, or to save it for the consumer, through the increased profits which municipal operation is expected to realize. Often a mixture of these motives exists, and others not mentioned may be present. Street railways, the telephone system, subways, printing plants, and other forms of business or productive enterprise have also not infrequently been taken over, or first established, under municipal ownership or management.

So far as results go, the public benefits expected have, particularly in the case of turnpikes, markets and water works, gen-

erally been realized in the form of better service; but the financial expectations, especially with respect to gas, electric light and street railway enterprises, have not been fulfilled, and in cases too numerous to mention the works have, under municipal control, been scandalously mismanaged. The frauds, corruption, and excessive waste and debt incident to the misuse of the public funds in connection with these quasi-commercial undertakings have led to many municipal investigations and to much corrective legislation; but it cannot be said that municipal works of this character are at the present time in this country (or, in fact, anywhere else) on the whole managed in a sound, economical or wholesome manner. The opportunities for personal or political dishonesty are great, and the temptation to operate the works not from revenue but by taxation, or worse yet by borrowed money, and to conceal the fact by misleading accounts and reports, has proved almost irresistible. There are probably not more than two or three municipal gas or electric light plants in the country which would not be shown, upon a proper analysis of their financial management, to be operated at a loss, or by means of loans increasing faster than the value of the works. The case of the commonest and most justifiable field for municipal management, the installation and operation of a public water supply, does not stand much better; for while the physical product is generally superior to that which could be expected from private management, the cost, both for operation and capital outlay, is usually far greater than necessary; many of the financial methods resorted to are utterly inconsistent with sound administration; and the true cost, as well as the way in which the money for extensions is really obtained, is generally concealed by deceptive bookkeeping. Ultimately, of course, the rates must be far higher, or the contributions from taxes much more, than would have been necessary under conservative and honest management.

This state of affairs is well known to everyone who has had occasion to inspect the plant, investigate the service, consider the cost, or overhaul the accounts of municipal water, gas, electric light and similar enterprises; but to most persons a thoroughgoing reform has seemed to be a very difficult accomplishment.

The general taxpayers are busy about other things; the ratepayers as a class are personally interested, or think they are, in obtaining low rates at the expense of the tax levy or the debt; and the professional politicians find their greatest opportunities in the mismanagement of municipal enterprises of this sort. The state authorities are reluctant to interfere in a matter which appears to concern the local finances only, and remedial legislation on the subject has generally proved inadequate. And, lastly, the subject is so easily obscured by false methods of accounting as to postpone the realization of the evil until it is almost beyond remedy. The final result is sometimes an ignominious surrender of the work to some private corporation; but more frequently a gradual and indefinite expansion of the city debt with little or nothing to show for it.

Some progress has, however, been made in recent years in the direction of a more or less effective state control over the acquisition and management of municipal works of the character here under consideration, and conspicuous instances of good management upon public account and with popular approval are not wanting.

In the opinion of the writer the reform of these functions of municipal management is, in the present state of public opinion, a much easier result to bring about — at least so far as future operation is concerned — than are some of the equally necessary reforms in the general administration of the city affairs; and it is more likely to last because the amounts spent for construction by the department having charge of the city's water, gas, or similar property, are relatively large, and the economies and other benefits which will follow a rigid compliance with sound financial methods will be conspicuous and easily appreciated.

In the first place it is not difficult to devise methods which will enable the taxpayers to prevent absolutely the borrowing of money to cover a deficit in operating expenses or to make good the depreciation of the works. These are two of the worst results of municipal management as commonly practiced; and they can be avoided without impairing the power of the city government for the time being to contribute as much as it pleases toward the

support of the works from the revenues and taxes of the year. The prohibition of loans for current expenses, the setting aside of sufficient sums to pay the outstanding sinking fund loans as they mature, the issue of all future loans in serial form, and the fixing of relatively short maximum terms of maturity, these and the other provisions of article VII, if applied to the business enterprises of the city, will effectually put a stop to the extravagant use of the borrowing power which has in so many cases run these enterprises into hopeless debt; and the provisions of the charter make it possible for any ten taxpayers to enforce these rules by appeal to the courts.

Another frequent result of municipal mismanagement, the gradual depreciation in efficiency of the plant due to inadequate contributions from revenue, can be avoided by providing that a fixed minimum sum, approximately equal to the annual depreciation, shall each year be set aside from the revenues of the works, or from taxes, and put into a fund to be used for extensions and improvements; and by providing that the rates charged shall be high enough to cover, with the appropriations if any from taxes, the entire annual expense for operation, interest, debt payments and depreciation. A compliance with these provisions can be secured by taxpayers' petitions to the courts, or preferably and more quickly, through the machinery of the state board which has jurisdiction over the rates charged by private companies.

Economy and honesty in the actual work, particularly in the more important, because more costly, work which is in the nature of construction, will be secured, or at least greatly aided, through the provisions of article VI respecting the mode of appointing the managers of the works, and the provisions of article VIII respecting the letting and execution of municipal contracts.

Finally, as there is no excuse for the deceptive methods of bookkeeping which are responsible for a large part of the waste and debt incident to municipal ownership, there ought to be no effective opposition to laws which shall force municipal corporations engaged in commercial enterprises to keep proper books and to render correct annual accounts, so that both the city officials and the voters may be able to ascertain at any time, and at the

end of the year to see at a glance, just what use has been made of the loans issued for the works, and just what is the amount of the true annual loss which must be made good from taxes.

The charter drafts accordingly provide in article X, section 9, for a system of accounts by which, on the one hand, the full actual annual cost, including operation, depreciation and all payments on account of the interest and principal of the outstanding debt, is charged up as annual expense; by which, on the other hand, the annual income of the works is credited and the other departments charged with the payment — in cash out of their regular appropriations — of the full commercial value of the service rendered to these departments; and by which the net resulting deficit, if any, to be made good by appropriations from taxes, is correctly ascertained and publicly reported. The precise methods by which it is sought to carry out these ideas are set out in the charter drafts and explained more in detail in the Notes.

Two rather fundamental questions remain for consideration. The first relates to the terms on which municipal ownership may originally be permitted, and the other to the extent to which such enterprises shall be supported by general taxation.

It is customary to prescribe that municipal enterprises which would come in competition with private companies shall be undertaken, in the first instance, only upon certain conditions intended to secure deliberation on the part of the city authorities and fair treatment to the companies involved. The first object is in some states secured by requiring a vote of the city authorities for two successive years; sometimes by requiring affirmative action on the part of the voters after a vote of the city government; and sometimes by a referendum to property-holders. Various combinations of these devices are also found in the general laws or special statutes relating to the subject. A property vote is of course a great safeguard against the hasty and ill-advised acquisition of a public utility; but, in conformity with the views expressed in chapter III, this particular device is ignored, and the preference given to a double vote of the mayor and city council subject to a referendum at a special election. The writer believes that adequate protection against the ill-advised adoption

of a program of municipal ownership will be afforded by a special referendum and by requiring prior to the election a report from the state board having jurisdiction over the rates and capitalization of private companies engaged in similar business. Deliberation, expert advice, full publicity, and a special election on the question presented, are probably better safeguards to the real interests of the people than reliance on a veto by property-owners. The vote should be at a special election, or it might as well be dispensed with altogether, as experience has shown that the vote at a general, state or municipal election upon complicated questions of municipal policy is apt to be most unsatisfactory. As often as not it is the reverse of what it would be if only those who had studied the question voted on it, or if all who did vote had understood the subject. A special election brings to the polls all those who know and care enough about the question to give their votes any value as a guide to the real popular will. In cities too large for a special referendum the report of a board of experts will be the main reliance against injudicious haste by the mayor and city council; and such a report will be of use in the case of cities of any size.

As to the protection to be accorded to existing corporations whose business will be interfered with, and possibly ruined, by municipal competition, legislative practice is also varied. In rare instances a municipal plant has been authorized without regard of any sort to private interests. In most cases the acquisition of the private company's property and franchises by eminent domain has been insisted on; but in recent years a plan has been evolved and put into more or less successful operation for giving the private company the option, in the event of the establishment of a municipal plant, of disposing of its own property to the city at its fair value exclusive of franchises.[1]

[1] This scheme originated in England where it has been applied in special cases to water supply companies and by general law to other public service corporations. In Massachusetts the legislature made use of this idea in several statutes authorizing the establishment of municipal water works by particular cities; and by the general laws of 1891 and 1893 applied the scheme to municipal gas and electric lighting plants. Connecticut adopted the Massachusetts system, but unfortunately used the act of 1891 as a model, not the better-drawn measure of 1893. All these

The scheme worked out in article X is based upon the idea that the interests of the private individuals or corporations whose business is interfered with will be sufficiently considered if they are given an option to sell their physical plant and intangible rights of the property, such as easements in real estate, at the fair value of the property in use without enhancement, direct or indirect, on account of earnings or of rights in the public streets or of other franchises unless and then only to the extent that these have been paid for in cash. The details of this part of the charter, which in a matter of this sort are most important, are founded on the experience of the writer as counsel for one side or the other in a considerable number of valuation or condemnation cases to which municipal ownership statutes have given rise in the past twenty-five years.

The provisions of the charter drafts relating to municipal trading are, in so far as original acquisition goes, confined to the three common cases of water, gas and electric light and power. Municipal ferries, markets and subways are much less common, and it did not seem wise to extend the charter by including drafts of municipal franchises for these activities.

As to whether or not the revenue-producing investments of municipal corporations should be operated for profit, or upon a merely self-supporting basis, or should to a greater or less extent receive aid from the tax levy, the provisions of law differ greatly; but in practice very few of them will be found to be actually operated without loss, and fewer yet at an annual profit. As the writer looks at this problem it is more important that the exact annual loss in operation should be accurately ascertained and published and actually made good from the taxes, instead of being met directly or indirectly by the issue of loans, than it is to see that the enterprise is carried on exclusively by its own revenues without contribution from the taxes. Moreover, in some municipal undertakings such as ferries, it is often impossible to operate satisfactorily without loss. In other cases such as water, gas,

statutes, however, both English and American, are drawn very loosely, especially in the clauses which fix the amount to be paid; and they have given rise to a great amount of litigation. See also ch. v, e, *supra*, pp. 47–48, and Part III, note 75.

electric light and subway undertakings, there would seem to be no reason why the rates should not be maintained at a figure sufficient to pay the entire annual cost properly computed. This is the general theory of the legislation on the subject, and is adopted as the basis of the provisions of the charter drafts in this book respecting the management of such enterprises. It is believed, moreover, that these provisions will be found adequate in practice to accomplish the purpose in view, which is more than can be said of most municipal ownership statutes.

No critic of the plan recommended in the charter drafts, by which the entire annual cost properly computed is to be met from rates, and the surplus, if any, put into the plant, need fear that it will cause a too rapid amortization of the city debt; and no supporter of the plan had better cherish the illusion of a rapidly vanishing debt. The legitimate demands for expenditures upon public account which must be met by loan increase faster than the population, faster perhaps than the wealth of the community.[1] Taking the debt of a city as a whole, there is little likelihood of any reduction, and none at all of too rapid a reduction.

[1] See further Part III, note 89, pp. 200–201.

CHAPTER XII

Conclusion

Although the object of the writer has been rather to prepare a practical handbook of municipal charter-making than to engage in a discussion of political theory, a few closing words of general comment may not be out of place.

The bad government which is due to the election of corrupt or inefficient men to office is largely irremediable by law, but it can be avoided to some extent, or made less frequent, by the adoption of a political system which facilitates an intelligent choice by the electorate and is thus suited to the requirements of popular suffrage. All that has been attempted in the political provisions of the charters drafted for this book is to apply to municipal government in the simplest and most direct form the essential principles of representative democracy as worked out in this country during the past century and a quarter.

On the other hand the bad government which is due to defective administration can in great measure be avoided by the compulsory adoption of sound business methods.

No law or set of laws, whether grouped in a charter or scattered through the statutes, can guarantee effective, economical, and progressive city government; but it can readily be demonstrated by the experience of the past fifty years that a very large percentage of the wrongs done to the people of our cities by their officials would have been avoided if correct methods of administration had been compelled by law. A properly drawn charter will prevent many of the grosser forms of extravagance and corruption; it will reduce the lesser wastes under inefficient officers; and it can be so drawn as to allow full scope for the efforts and abilities of efficient officials when these happen to be elected.

Bearing in mind these objections and limitations the task of drawing a workable city charter is rendered at once both difficult and easy by the vast volume of experience accumulated during

the past half-century by towns and cities in the United States. It is easy because nearly every device for the improvement of municipal administration which political ingenuity can suggest has been tried in one form or another, not only once but many times, in this country, and under conditions not essentially dissimilar to those which affect any American community for which a charter is to be drawn. It is difficult also because of this very abundance of material, much of which is accessible only to the diligent, and all of which requires interpretation in the light of the special laws and conditions of the particular community involved.

Close contact with municipal affairs for twenty-five years has led the writer to believe strongly that the surest way to secure practical and immediate improvement in a city government is to make intelligent use of this American material and experience rather than to copy foreign precedents or to assume that an entirely new and speculative system must be invented. While municipal government in the United States is one of the most interesting and promising fields of public law now open to the legislator, and while progress in it must, as in other branches of knowledge, depend upon constant experimentation, it presents nevertheless a very limited opportunity for the exploitation of social philosophy, or the application of foreign precedents.

Ninety-nine per cent of the questions which arise in municipal government are questions of business administration rather than of political policy, and while the main problem is not so much to keep down expenses and taxes as to secure without excessive waste the service demanded of our cities by a progressive age and people, this itself is a question of sound finance rather than a question of social ethics or doctrinaire politics. The increasing complications and requirements of modern city life will doubtless lead to progressively larger expenditures by municipal corporations, but the aggregate amount of money which in any community or age can be expended upon public account without harm to all is limited by conditions over which the lawmaker has no control. The pressure upon the city's financial resources of the increasing numbers who prefer urban to rural life, and whose social and moral welfare must be provided for in great part by

contributions from the public treasury, can only be met by the most rigid rules for securing efficiency in the expenditure of the heavy taxes necessitated by these conditions. To secure the maximum amount of public service for a given and reasonable amount of public money is, therefore, the real problem of municipal administration. The solution of this problem is not to be advanced by shutting our eyes to the successes and failures of American city government during the past fifty years, or by adopting new and radically different methods, whether borrowed from the experience of foreign cities under entirely different conditions, or invented by socialist unbelievers in the capacity of our people for representative government. Bearing in mind that the ultimate aim in drawing a city charter should be to secure a practical working scheme of administration, and remembering the accumulated experience to which we now have a more or less troublesome access, the last thing we should do is to adopt revolutionary suggestions for the political constitution of the city until they have been thoroughly tested by actual experience under similar conditions. Admitting, as we must, that the mistakes and poor results of municipal government in this country are largely due to the adoption of political machinery unsuited to the motive power, the way to improve this machinery is to examine carefully why and where it has failed and then to mend it in the light of this information, not to throw it away and substitute some different mechanism borrowed from the shorter or still more unsuccessful experiments of other times and countries.

Above all, the political features of a city charter, whatever they be, should not be allowed to overshadow or imperil the operation of the more important provisions relating to the administration of the city business. These are of far greater consequence than the political constitution of a city; and, in the opinion of the writer, much of the extravagance, waste and inefficiency of city government as commonly practiced in this country is due to a failure to recognize this fact. Hundreds of city charters have brought disappointment to their authors because the administrative provisions have been inadequate. Others, containing sound administrative details, have been wrecked in application

because some inconsistent political feature has been thoughtlessly inserted. Many a charter draft prepared with skill and knowledge, has been so amended by a hestitating legislature as to be wholly ineffective. Simplicity of political structure accompanied by thoroughness in the administrative details, must be the basis of charter reform.

The drafts represented in this book have been prepared in accordance with these principles to the best of the writer's ability, but with no illusion on his part that they are either perfect or complete.

PART II

CHARTER DRAFTS

CHARTER DRAFTS‡

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AN ACT TO REVISE THE CHARTER OF THE CITY OF ——*

Be it enacted by the [Senate and House of Representatives in General Court assembled]† as follows:

ARTICLE I. GENERAL PROVISIONS

Definitions SECTION 1. The following words and phrases where used in this act shall, unless a contrary intention clearly appears, have the following meanings respectively:

Article The word " article " followed by a Roman numeral shall mean that one of the main divisions of this act entitled articles which is indicated by the numeral.

Regular municipal election The phrase " regular municipal election " shall mean the annual election of municipal officers for which provision is made in section two of article II.

Mayor and city council The phrase " mayor and city council " shall mean the mayor and city council of the city of —— elected in accordance with the provisions of article II and their successors acting on and after January —, 19—, under the provisions of section four of article III.

Officer The words " officer," " officers," and " administrative officers " when used without further qualification or description shall mean any person or persons in charge of any department or division of the city business, as provided in section one of article VI.

The said words when used in contrast to a board or members of a board or to division heads shall mean any of the persons in sole charge of a department as provided in section one of article VI.

Ordinance The word " ordinance " shall mean a vote or order of the mayor and city council entitled " ordinance " and designed for the permanent regulation of any matter within the jurisdiction of the mayor and city council as laid down in this act.

Civil service commission The phrase " civil service commission " shall mean the state board, if any, having charge of the selection or ap-

* or " An act creating the city of ——," if the act is to serve as an original charter.

† Massachusetts style.

pointment of the non-elective officials or employees of the state or any division thereof.

Court

The word " court " shall mean the —— court for the county in which the city of —— is situated, or any justice thereof, with such rights of review or appeal as may exist or be provided by law.

Taxable inhabitants

The words " taxable inhabitants " shall mean legal voters of the city who have been assessed a tax on real estate at the last assessment for purposes of taxation.

Margin and table of contents [1]

The words in the margin of this act and the table of contents shall be printed as a part of the act; but the said marginal words and table shall be understood to have been inserted for convenience merely and shall not be used in the construction of the act.

Incorporation [2]

SECTION 2. The inhabitants of [the city of]* —— shall be and continue to be a body politic and corporate under the [same name],* and, except as herein provided, shall have and enjoy all the rights, privileges and property now vested in or conferred upon the [city]* and be subject to all the duties and obligations to which the [city]* is now subject.

Organization

SECTION 3. On and after the first Monday in January in the year nineteen hundred and —— the government of the city shall be vested in the mayor, the city council, the school committee, and the officers and boards for whom provision is made in this act, and shall be conducted in accordance with the terms thereof.

All powers now vested by general or special law in the mayor, in the mayor and aldermen, or mayor and city council, in the board of aldermen or city council, in the school committee, or in any officer of the city shall, unless hereby repealed, be exercised by the mayor, by the mayor and city council, by the city council, by the school committee, or by the officers and boards for which provision is made in this act in the manner and subject to the conditions and limitations herein prescribed; and any such

* Use this language for an amended city charter. If the charter is enacted for a community not already a city different language should be used in this section and in sections three and five of this article.

powers not herein repealed or specifically vested in the mayor, city council, school committee or officers and boards of the city, shall be exercised by the mayor and city council.

The term of office of every person, however elected or appointed, who shall be an officer of the city on the —— day of January, 19—, shall expire at ten o'clock in the forenoon of the following day; but all such officers, except the mayor and the members of the board of aldermen, common council and school committee,† shall continue to discharge their respective duties and to draw compensation at the rates then established, until they resign or their successors have been appointed and have qualified.

Municipal and fiscal years[3]

SECTION 4. The municipal year shall begin and end at ten o'clock in the morning of the first Monday in January in each year.

The fiscal year 19— shall begin on the first day of ——, 19—, and end on the thirty-first day of December, 19—.‡ Thereafter the fiscal year shall begin on the first day of January in each year and end on the thirty-first day of December next following.

Repeal of laws and ordinances

SECTION 5. All acts and parts of acts specifically applicable to the city and inconsistent with this act are hereby repealed, and no general statutes or parts thereof inconsistent with this act shall hereafter apply to the city. All by-laws and ordinances of the city inconsistent with this act are hereby annulled. All acts, by-laws and ordinances not inconsistent with this act are continued in force until altered, amended, repealed or annulled.

The repeal of acts and of general statutes or parts thereof and the annulment of by-laws and ordinances shall not affect any act done or any right accruing or accrued, or any offense committed, or any penalty or forfeiture incurred,

† This exception should include and be confined to the mayor and legislative branches of city government howsoever constituted at the passage of the charter.

‡ This clause is to cover any change effected by the charter in the fiscal year. If, for instance, the present fiscal year runs from December 1 to November 30, this clause should be filled out so that the first fiscal year under the charter would be thirteen months long. If the present fiscal year begins January 1 the first sentence in the second paragraph and the word "Thereafter" at the beginning of the last sentence should be omitted.

under the acts, statutes, by-laws or ordinances hereby repealed or annulled, or any civil suit or proceeding then pending, or any prosecution then pending for any offense committed or for the recovery of any penalty or forfeiture previously incurred.

No act or general statute or part thereof, and no by-law or ordinance, heretofore repealed or annulled, shall be revived by the repeal and annulment hereinbefore provided unless such revivor is clearly intended in this act.

ARTICLE II. NOMINATIONS AND ELECTIONS [4]

General provisions

SECTION 1. The mayor, the members of the city council, and the members of the school committee shall be elected by the voters of the city qualified by general law to vote for such municipal officers respectively; and, except as herein provided, the general laws applicable to the nomination and election of such officers shall apply.

The regular municipal election [4]

SECTION 2. The first election under this act shall be held on the —— day of December, 19—, when there shall be elected a mayor, seven members of the city council and five members of the school committee. The mayor thus elected shall hold office for three years from the first Monday in January, 19—, and the three candidates for the council receiving the highest number of votes shall hold office for three years, the two receiving the next highest number of votes shall hold office for two years, and the two receiving the next highest number of votes shall hold office for one year. The candidate for school committee receiving the highest number of votes shall hold office for five years, the candidate receiving the next highest number of votes shall hold office for four years, the candidate receiving the next highest number of votes shall hold office for three years, the candidate receiving the next highest number of votes shall hold office for two years, and the candidate receiving the next highest number of votes shall hold office for one year.

Thereafter a regular or annual municipal election shall be held on the first Tuesday after the first Monday of December in each year, when there shall be elected one mem-

ber of the school committee for a five-year term, and for three-year terms either two or three members of the city council according to the number of members whose terms expire that year. At such regular elections vacancies shall be filled as provided in section three of this article; and every third year a mayor shall be elected for a term of three years. All said terms shall begin on the first Monday in January following the election.

Vacancies and special elections [6]

SECTION 3. A vacancy shall be deemed to occur in the office of mayor, in the city council or in the school committee if the incumbent dies, resigns or is declared by the court upon petition of the mayor, the city solicitor or the city council to be permanently incapacitated for the performance of his official duties. A vacancy shall also be deemed to exist if at any election for mayor or a single member of the city council or school committee there is a tie in the votes for the two leading candidates, or if at any election for two or more members of the city council or school committee it is impossible by reason of a tie vote to determine who is elected.

A vacancy in the office of mayor occurring more than six months after a regular municipal election shall be filled for the remainder of the term at the next regular municipal election; and at the election last referred to any vacancies then existing in the city council or school committee in respect of persons who have been elected for terms extending beyond the municipal year shall also be filled.

If, however, a vacancy occurs in the office of mayor during the first six months after a regular municipal election, a special election shall be held within sixty days at which a mayor shall be elected to serve for the remainder of the term; and if during said period of six months and more than sixty days before the special election a vacancy occurs not only in the office of mayor, but also in the city council or the school committee, said vacancy in the city council or the school committee, as the case may be, shall also be filled at said special election for the remainder of the term.

SECTION 4. All nominations for mayor, city council or school committee shall be by nomination papers signed by

qualified voters of the city equal in number to three per cent of the number of voters registered at the next preceding regular municipal election,[6] and filed with the board of election commissioners for which provision is made in article VI at or before five o'clock in the afternoon of the twenty-fifth day prior to the election, provided such signatures to the number required are certified by the commissioners as hereinafter provided.

Nominations, withdrawals and substitutions

If a candidate dies before the election or withdraws or is found to be ineligible the vacancy may be filled by a committee of not less than five persons, or a majority thereof, if such committee is named and so authorized in the nomination papers.

The names of candidates appearing on nomination papers shall, when filed, be a matter of public record; but the nomination papers shall not be open to public inspection until after certification. After such nomination papers have been filed, the commissioners shall certify thereon the number of valid signatures which are the names of registered voters in the city qualified to sign the same. They need not certify a greater number of names than are required to make a nomination, with one-fifth of such number added thereto. All nominations not supported by a number of names so certified equivalent to the number required to make a nomination shall be invalid. The commissioners shall complete such certification on or before five o'clock in the afternoon on the sixteenth day preceding the election. Such certification shall not preclude any voter from filing objections to the validity of the nomination. All withdrawals and objections to such nominations shall be filed with the commissioners on or before five o'clock in the afternoon on the fourteenth day preceding the election. All substitutions to fill vacancies caused by death, withdrawal or ineligibility shall be filed with the commissioners on or before five o'clock in the afternoon on the twelfth day preceding the election.

Every voter may sign nomination papers for as many candidates for each office as there are persons to be elected thereto, and no more.

Form of nomination papers

SECTION 5. The nomination papers shall be in the following form:

All nomination papers must be filed with the Election Commissioners at or before five o'clock P.M., November —, 19—.

CITY OF ——

NOMINATION PAPER

The undersigned, registered voters of the City of —— qualified to vote for a candidate for the office named below, make the following nomination of candidates to be voted for at the election to be held in the City of —— on December —, 19—.

NAME OF CANDIDATE Give first or middle name in full	OFFICE FOR WHICH NOMINATED	RESIDENCE Street and number, if any
1.		
2.		
3.		
4.		
5.		
6.		
etc.		

We certify that we have not subscribed to more nominations of candidates for this office than there are persons to be elected thereto.

In case of death, withdrawal, or incapacity of any of the above nominees, we authorize the following committee of not less than five persons or a majority thereof as our representatives to fill the vacancy in the manner prescribed by law.

NAMES OF COMMITTEE OF NOT LESS THAN FIVE PERSONS

NAMES OF COMMITTEE	RESIDENCE	NAMES OF COMMITTEE	RESIDENCE

SIGNATURES AND RESIDENCES OF NOMINATORS

Signatures of Nominators To be made in person, with full surname, Christian name, and initial of every other name	Residence at last registration	Ward	Precinct	Residence at present time, with street and number, if any
1.				
2.				
3.				
4.				
5.				
etc.				

ACCEPTANCE OF NOMINATION

I hereby accept the within nomination.

1. _____

2. _____

3. _____

etc. _____

AFFIDAVITS TO NOMINATION PAPERS

(Name of State)

(Name of County), ss. (Name of City), ——, 19—.

Then personally appeared.....who, I am satisfied, is one of the signers of the within nomination paper, and made oath that the statements therein contained are true to the best of his knowledge and belief, and that his postoffice address is .....

Before me,

.....

Justice of the Peace.

CERTIFICATION BY ELECTION COMMISSIONERS

(Name of City), ——, 19—.

We certify that..... of the within signatures are names of registered voters in the City of —— qualified to sign this nomination paper.

———
———
———} *Board of Election Commissioners of*.....

Call for elections

SECTION 6. Elections shall be called by the commissioners at least thirty days before the date set for the same, and notice thereof shall be advertised in one or more newspapers published in the city. At least eight days before the election the commissioners shall cause sample ballots, printed on paper of different color, but otherwise identical with the ballot to be used at the election, to be posted conspicuously at each of the voting places.

Form of ballot [7]

SECTION 7. The following form of ballot shall be used at municipal elections:

To vote for a person mark a cross × in square at right of name and residence. If you wrongly mark, tear, or deface a ballot, return it and obtain another.

For MAYOR (3 years) Vote for ONE			For SCHOOL COMMITTEE (5 years) Vote for ONE		
John Smith	17 Grove St.		Lemuel Lee	78 Spring St.	
James Jones	27 Pine Ave.		George Wensel	64 Broadway	
Henry Reed	3 Oak Sq.		Susan Goodwin	43 Cortland Pl.	

For CITY COUNCIL (3 years) Vote for TWO [or THREE]		
Charles Doam	42 Aftel St.	
Alfred Adams	6 Auburn Ave.	
Richard Roe	107 Johnson Pl.	
Frank Collins	74 Broadway	
Walter Ballot	226 West Fifth St.	

Mark a Cross × in the square at the right of your answer.

Shall the City of —— issue bonds to the amount of $50,000 for the purchase of a schoolhouse site in ward —?	YES	
	NO	
Shall licenses be granted for the sale of intoxicating liquors in this city?	YES	
	NO	

No party designations or any words or symbols whatsoever descriptive of or relating to the candidates except words setting forth their place of residence shall appear upon the ballot.

The names of candidates shall appear upon the ballot in the order determined by the commissioners by lot at a drawing of names at which each candidate or his representative shall have an opportunity to be present.

There shall be left at the end of each list of candidates for the different offices as many blank spaces as there are candidates to be voted for, in which the voter may write

or place the names of persons not printed on the ballot for whom he desires to vote.

Form of referenda

Questions relating to the granting of licenses for the sale of intoxicating liquors shall appear on the ballot in the form hereinabove noted. The questions provided for in section six of article VII and section three of article X shall appear on the ballot in the form set forth in said sections respectively. If any other question is to appear upon the ballot the commissioners shall advertise the form in which the question is to be printed in two or more daily papers published in the city on two or more days at least twenty days before the election. At any time not later than the sixteenth day before the election ten taxable inhabitants of the city may petition the court for a revision of the form of the question, and the court, upon a summary hearing, of which the commissioners shall have notice, shall not later than the twelfth day before the election determine in what form the question shall be printed upon the ballot in order that the voters may be fairly informed as to the meaning of the question. The commissioners shall cause the question to appear upon the ballot in the form thus determined by the court.[8]

Reverse of ballot

The reverse of the ballot shall contain the title "Official Ballot," followed by the name of the city, number of the ward and of the precinct, the date of the election and facsimile signatures of the commissioners.

Article III. The Mayor

Election and compensation

Section 1. The mayor shall be nominated and elected in the manner provided in article II.

He shall receive a compensation of —— thousand dollars per annum.

Qualification

Section 2. The mayor elected at a regular municipal election shall at ten o'clock in the forenoon of the first Monday in January following the election, or as soon thereafter as may be, be sworn to the faithful discharge of his duties by the city clerk, or, in his absence, by a justice of the peace.

A mayor elected at a special election shall be thus sworn at any time thereafter.

General administrative powers[9]

SECTION 3. The mayor shall be the chief executive officer of the city. He shall have the powers and be subject to the duties in this act provided, and he shall have such further powers and be subject to such further duties, not inconsistent with this act, as may from time to time be prescribed by law or ordinance. He shall have general supervision of the administration and business of the city, and shall see that the laws applicable to the city, including the provisions of this act, the ordinances of the city and the orders of the administrative officers and boards are duly enforced.

The mayor may at any time, in person or through an officer or division head, or a member of a board, attend and address the city council or the school committee upon such subject as he may desire, but shall have no vote in either of said bodies.

All legal processes against the city shall be served upon the mayor by leaving copies thereof at his office in the city hall and by making due returns thereof.

Power over acts of the city council[10]

Money votes

SECTION 4. Every ordinance and vote of the city council which involves the appropriation, expenditure or borrowing of money, or the raising of taxes, shall be presented to the mayor, and shall take effect upon his approval in writing within fifteen days after the receipt thereof. If before the next meeting of the council after said period of fifteen days he fails to return the ordinance or vote with his objections thereto in writing, the said ordinance or vote shall take effect in the same manner as if he had approved it within said period of fifteen days. If within said period or at any time before the next meeting of the council after the expiration of said period the mayor returns the ordinance or vote to the council with his objections thereto in writing, it shall be void. If the total amount of money to be appropriated, expended, borrowed or raised by such ordinance or vote is divided into items, the mayor may approve some of them and disapprove the others, and may approve some items for a reduced amount; and such items as are approved in their entirety and the reduced amount of such items as are reduced shall be in force, while the

items and parts of items which are disapproved shall be void.

Other votes

Every ordinance and vote of the city council which does not involve the appropriation, expenditure or borrowing of money or relate to the internal affairs of the council, or to matters which are within the exclusive jurisdiction of the city council under section five of article IV, shall be presented to the mayor, and shall take effect upon his approval of the same in writing within fifteen days from the receipt thereof. If before the next meeting of the council after said period of fifteen days, he fails to return the ordinance or vote to the council, together with his objections thereto in writing, the said ordinance or vote shall take effect in the same manner as if he had approved it within said period of fifteen days. If within said period or at any time before the next meeting of the council after the expiration of said period, the mayor returns the ordinance or vote with his objections thereto in writing to the council, the latter shall enter the objections at large upon its records and shall again consider it; and if five members of the council vote to pass the ordinance or vote, notwithstanding the mayor's objections, the same shall be in force.

Vacancies and succession [11]

SECTION 5. Whenever a vacancy as defined in section three of article II shall occur in the office of mayor, the city solicitor shall be mayor and shall have all the powers and perform the duties of the office and shall receive the compensation attached to the office, until the vacancy is filled in the manner provided in said article. If the office of city solicitor is then vacant the chairman of the city council shall be mayor under the same conditions until the vacancy in the office of mayor is filled as aforesaid.

The acting mayor [12]

SECTION 6. During the temporary absence or disability of the mayor the city solicitor or, if he also is absent or disabled, the chairman of the city council shall act as mayor *pro tempore*, shall be called the acting mayor, and shall serve without special compensation for such service. He may approve the pay-rolls, suspend any officer over whom the mayor has the power of removal, exercise the power of making temporary appointments vested in the mayor by

section five of article VI, and exercise the powers and perform the duties of the mayor in matters of urgency not admitting of delay. He shall not have the power of making permanent appointments or the power of removal or the power to approve or sign deeds, bonds, contracts and other documents requiring the approval of the mayor, or the power to approve or disapprove the ordinances and votes of the city council; provided, however, that if the absence or disability of the mayor continues for more than fifteen days, and he is unable to approve documents requiring his approval, or to approve or disapprove the acts of the city council, the acting mayor may exercise the powers of the mayor in this regard.

ARTICLE IV. THE CITY COUNCIL

Election and compensation

SECTION 1. The city council shall consist of seven persons, who shall be nominated and elected in the manner provided in article II. They shall serve without compensation.

Organization [13]

SECTION 2. The city council shall meet at ten o'clock in the forenoon of the first Monday in January of each year and the newly elected members shall be sworn to the faithful discharge of their duties by the city clerk, or, in his absence, by a justice of the peace. If any member-elect be absent the oath of office may be administered to him in like manner at any time thereafter.

At said meeting, or as soon thereafter as may be, the council shall be called to order by the member eldest in years of those present, and he shall preside until the council, by vote of a majority of all the members, chooses by ballot one of its members as chairman. The chairman shall be sworn to the faithful discharge of his duties by the city clerk, or, in his absence, by a justice of the peace. He shall have the right to vote on any question, and may at any time be removed by the affirmative vote, taken by yeas and nays, of five members of the city council. In case of the absence of the chairman the member eldest in years shall preside, and, in case of the death, resignation or removal of the chairman, the member eldest in years shall

preside until a successor is elected and sworn in the manner provided above.

Members elected at a special election shall be sworn at any time thereafter.

Proceedings

SECTION 3. The council shall determine its own rules of procedure; but it shall sit with open doors, whether acting as the city council or in committee of the whole.[14]

Regular meetings of the council shall be held at such times as shall be prescribed by ordinance, provided that at least one regular meeting shall be held every thirty-one days.

Special meetings may be called at any time by the city clerk at the request in writing of the mayor or of three members of the council, provided that notice be given as prescribed by ordinance.

The attendance of members may be secured in such manner and by such penalties as may be provided by ordinance.

Except as otherwise herein provided four members of the council shall constitute a quorum for the transaction of all business, but a less number may adjourn from time to time.

All acts of the council, whether entitled votes, orders or ordinances, shall be in the form of written or printed votes.[15] All votes relating to the appropriation, expenditure or borrowing of money shall be taken by yeas and nays upon a call of names, and this method of voting shall be adopted for any question if it is requested by any member.

A journal of the proceedings of each meeting shall be kept by the city clerk, shall be open to public inspection, and a duly attested copy thereof shall be published within seven days after each meeting in some newspaper published in the city. All communications from the mayor shall be entered at large upon the journal.

Powers of the council subject to action by the mayor [16]

SECTION 4. The council shall have power subject to action by the mayor as provided in section four of article III and to the other provisions of this act to appropriate, borrow and transfer money for any lawful purpose; to lay out, widen and extend public streets, parks, playgrounds,

General powers

bridges; to acquire by purchase or taking such real estate as may be required for the lawful use of any department of the city government including the public schools; to authorize the sale by the commissioner of property or any real estate belonging to the city not used or required by any department; to compromise and settle claims and suits against the city; to authorize the construction and use in, under or over the public streets, of vaults, coal-holes, bay-windows, balconies, roofs, cornices, signs, posts and other encroachments for the benefit of the owners of adjoining real estate; to authorize, subject to the approval of the state board hereinafter referred to, persons and corporations to lay, construct, maintain, repair and use pipes, conduits, manholes, poles, wires, rails and other machinery in, under or over the public streets, for the distribution to the city or to private customers of water, gas, electricity, air, steam or other fluids, or for the transportation of passengers or freight, and subject to such approval to fix the terms and conditions of such construction or use; and to authorize subject to the provisions of article X the acquisition and operation of plants for the supply and distribution of water, gas or electricity for public and private use, and shall have power subject to said provisions to exercise all other powers by this act vested in the mayor and city council of the city of ——.

Ordinances

The council shall also have power subject to the provisions of section four of article III and to the other provisions of this act, to enact reasonable ordinances for the establishment of departments or divisions for the executive work of the city in addition to those enumerated in section one of article VI, for establishing the compensation or salaries of the officers, members of boards and division heads enumerated in said section or placed in charge of such additional departments or divisions, and the amount of the bonds to be furnished by them under the provisions of said section of article VI; for establishing the terms upon which permits shall be granted by the superintendent of streets for temporary openings in the public streets and the fees which shall be paid for such permits; for establishing the terms and conditions upon

which encroachments upon the public streets may be permitted for the benefit of the owners of adjoining real estate, and the fees to be paid therefor, which fees may take the form of annual rent;[17] for establishing, subject to any general or special law affecting the city, the height, materials and construction of all buildings that may be erected, enlarged or altered in the city or any part thereof; for establishing the manner in which personal property not used or required by any department shall be disposed of; for establishing reasonable rules and regulations for the conduct of the business of the city and its several departments and for the protection of health, life and property, within the city; and for consolidating and re-enacting from time to time the ordinances of the city then in force.

Limitations

Provided, however, that no real estate shall be acquired by private treaty for a price greater by twenty-five per cent than the average assessed value thereof during the three preceding years,[18] no real estate shall be acquired by taking if already appropriated to a public use, and for all property thus taken compensation shall be made by the city in the manner and under the procedure provided by law when private property is taken for public uses;[19] no real estate shall be acquired either by private treaty or public taking for any municipal use, and no public street shall be laid out, widened or extended, unless an appropriation, estimated by the board of assessors in a written communication to the mayor or council as adequate, has been duly authorized by the mayor and city council, nor unless the proposed acquisition of land or street improvement has within three months prior to the vote of the council authorizing the same been recommended in a written communication to the mayor or city council by the officer or board in charge of the department for or in connection with the duties of which the land is to be acquired or the improvement undertaken or in the case of land for schoolhouses by the school committee;[20] and provided further that no authority granted by the mayor and city council to any person or corporation to lay, construct, maintain, repair and use pipes, conduits, manholes, poles, wires, rails or other machinery in, under or over the public streets, shall

be valid without the approval of the state board having jurisdiction over the use of the public streets for the purpose for which said authority has been granted,[21] and such authority shall be subject to revocation, amendment or regulation as now or hereafter provided by law, and that a like approval shall be requisite to the validity of all ordinances respecting temporary openings in the streets.

Powers of the council and its members independent of action by the mayor

SECTION 5. The council shall have power without reference to the provisions of section four of article III but subject to the other provisions of this act: to appoint, subject to the provisions of section three of article VI, the city clerk and such other employees as it may require for the discharge of its duties; to expend such moneys as are reasonably necessary for said purposes; to request at any time from the mayor specific information necessary to enable it to appropriate money, to enact ordinances and otherwise to discharge its duties and to request his presence to answer written questions relating thereto at a meeting to be held not earlier than one week after the receipt of the questions in which case the mayor shall personally, or through an officer, division head, or member of a board, attend such meeting and publicly answer such questions; to request at any time from the school committee specific information relating to the schools necessary to enable the council to appropriate money for school purposes, and to request the presence of the chairman of the school committee to answer written questions relating to such matters at a meeting to be held not earlier than one week after the receipt of the questions in which case the chairman of the committee shall, personally or through some other member of the committee or through the superintendent of schools, attend such meeting and publicly answer such questions; to sanction under the provisions of section one of article VIII and section one of article X long-term leases and contracts after execution and approval by the mayor;[22] and subject to the provisions of this act to exercise all other powers by this act vested in the city council as distinguished from the mayor and city council.[23]

The members of the city council shall have access to the books and accounts of the executive departments of the government.

Except as in this act specifically permitted neither the city council nor any member or committee thereof, shall directly or indirectly take part in the employment of labor, the making of contracts, the purchase of materials or supplies, the construction, alteration or repair of any public works, buildings or other property, the care, custody and management of the same, the conduct of any of the executive or administrative business of the city, the appointment or removal of the administrative officers and their employees, or the expenditure of public money. **Prohibitions** [24]

SECTION 6. Whenever a vacancy, as defined in article II, occurs in the council during the first six months after a regular municipal election and more than sixty days before the holding of a special election to fill a vacancy in the office of mayor, the vacancy in the council shall be filled at such special election, as in said article provided. **Vacancies**

A vacancy occurring under other circumstances shall be filled by vote of the council, and the person thus elected shall serve as member of the council during the remainder of the municipal year.

ARTICLE V. THE SCHOOL COMMITTEE

SECTION 1. The school committee shall consist of five persons, who shall be nominated and elected in the manner provided in article II. They shall serve without compensation. **Election and compensation**

SECTION 2. The school committee shall meet at ten o'clock in the forenoon of the first Monday in January of each year and the newly elected members shall be sworn to the faithful discharge of their duties by the city clerk or in his absence by a justice of the peace. If any member-elect be absent, the oath of office may be administered to him in like manner at any time thereafter. **Organization**

At said meeting, or as soon thereafter as may be, the committee shall be called to order by the member eldest in years of those present, and he shall preside until the

committee, by vote of a majority of all the members, chooses by ballot one of its members as chairman. The chairman shall be sworn to the faithful discharge of his duties by the city clerk, or, in his absence, by a justice of the peace. He shall have the right to vote on any question, and may at any time be removed by the affirmative vote, taken by yeas and nays, of three members of the committee. In case of the absence of the chairman the member eldest in years shall preside; and in case of the death, resignation or removal of the chairman, the member eldest in years shall preside until his successor is elected and sworn in the manner above provided.

Members elected at a special election shall be sworn at any time.

Proceedings SECTION 3. The committee shall determine its own rules of procedure; but it shall sit with open doors, whether acting as the school committee or in committee of the whole.

Regular meetings of the committee shall be held at such times as shall be prescribed by the rules of the committee, provided that at least one regular meeting shall be held every thirty-one days.

Special meetings may be called at any time by the secretary of the committee at the request in writing of the mayor or of two members of the committee, provided that a written notice be mailed to each member at his home address at least twenty-four hours before the time set for the meeting.

The attendance of members may be secured in such manner and by such penalties as the committee may by rule provide.

Three members of the committee shall constitute a quorum for the transaction of all business except as otherwise provided in this act, but a less number may adjourn from time to time.

All acts of the committee shall be in the form of written or printed orders or votes. All voting shall be by yeas and nays.

A journal of the proceedings of each meeting shall be kept by the secretary, shall be open to public inspection, and a duly attested copy thereof shall be published within

seven days after each meeting in some newspaper published in the city. All communications from the mayor shall be entered at large upon the journal.

Officers and employees

SECTION 4. The committee shall appoint a secretary, a superintendent of schools and such teachers as it may deem necessary for the proper discharge of its duties, may define their terms of service and fix their compensation, and may suspend or remove them at pleasure.

The committee shall also appoint, subject to the approval of the civil service commission in the manner provided by law, such other employees as it may deem necessary, may fix their compensation, and may suspend or remove them at pleasure.

General powers

SECTION 5. The committee shall have the entire management of the public schools of the city, including the expenditure of all moneys appropriated by the mayor and city council for school purposes, the construction, alteration, enlargement, care and repair of the schoolhouses and yards, the purchase of supplies and all other matters incident to said management; and subject to the provisions of this act shall have all the powers conferred, and discharge the duties imposed by law upon the committee.

Provided, however, that no money shall be expended for any purpose other than the purposes designated in the orders or votes of the mayor and city council appropriating the same; nor in excess of the appropriations; and that all and singular the provisions and penalties provided in articles VIII and XI shall apply to the school committee and its work.

The chairman or any member of the committee or the superintendent if requested by the committee may at any time attend and address the city council upon any subject relating to the schools.

Vacancies

SECTION 6. Whenever a vacancy, as defined in article II, occurs in the committee during the first six months after a regular municipal election and more than sixty days before the holding of a special election to fill a vacancy in the office of mayor, the vacancy in the committee shall be filled at such special election as in said article provided.

A vacancy occurring under other circumstances shall be filled by vote of the committee, and the person thus elected shall serve as a member of the committee during the remainder of the municipal year.

ARTICLE VI. ORGANIZATION OF THE EXECUTIVE DEPARTMENTS

Departments, divisions, officers and employees

SECTION 1. The executive business of the city, other than that relating to the public schools, shall be divided among the departments and divisions and shall be transacted, under the provisions of this act, by the officers, boards and division heads set forth in the following table:

DEPARTMENTS AND DIVISIONS	OFFICERS OR BOARDS IN CHARGE OF DEPARTMENTS	DIVISION HEADS IN CHARGE OF DIVISIONS
Mayor's Office	Mayor's Secretary	
Law Department	City Solicitor	
Public Safety Department	Commissioner of Public Safety	
Building Division		Sup't of Buildings
Health Division		City Physician
Fire Division		Fire Chief
Police Division		Chief of Police
Weights and Measures Division		Sealer of Weights and Measures
Public Works Department	Commissioner of Public Works	
Engineering Division		City Engineer
Streets and Sewers Division		Sup't of Streets
Parks and Playgrounds Division		Sup't of Parks
Municipal Property Department	Commissioner of Property	
Water Division		Manager of Water Works
Gas Division		Manager of Gas and Electric Works
Electric Division		
Miscellaneous Property Division		Property Agent
Penal Institutions Department	Commissioner of Penal Institutions	
Treasury Department	City Treasurer	
Accounting Department	City Auditor	
Recording Department	City Clerk	
Assessing Department	Board of Three Assessors	
Licensing Department	" " Commissioners	
Elections Department	" " Commissioners	
Public Charities Department	" " Trustees	
Poor Relief Division		Sup't of Poor Relief
Insanity Division		" " Insane Asylum
Cemetery Division		" " Cemeteries
Public Library Department	Board of Three Trustees	Librarian

Each division head shall transact the business of his division under the direction of the officer or board in charge of the department of which his division is a part, and shall under such direction exercise all the powers and be subject to all the duties prescribed in this act for the transaction

of such business; and the mayor shall exercise over the officers and boards in charge of the several departments the powers of supervision and control vested in him under the provisions of section three of article III.

General powers

The officers, boards and division heads specified in the foregoing table shall also except as provided in this act exercise all the powers conferred and discharge all the duties imposed by law or ordinance upon such officers, boards and division heads respectively, or upon officers differently designated but having charge of similar branches of the city's work, and wherever it is doubtful whether under this provision any such powers are conferred or any such duties are imposed upon the officer or board in charge of a department or upon one of the division heads of such department, the latter shall be intended; but all the powers conferred and all the duties imposed by law upon the board of health for the city shall, except as in this act provided, be exercised and discharged by a board of health consisting of the commissioner of public safety who shall be the chairman, the city physician and the superintendent of buildings.

Organizations of the boards

Each of the boards for which provision is hereinbefore made except the board of health shall elect a chairman. Every board shall appoint a secretary, who may be a member thereof, who shall be present at meetings, shall keep a record of the proceedings, and shall perform such other duties as may be assigned him by the board. If the secretary is absent a temporary secretary shall be appointed. The records shall be open to public inspection. The boards shall act either by votes duly recorded by the secretary or by papers signed by all the members, unless in some particular provision of this act one of these methods or some other method is clearly prescribed. Wherever in this act the signature of a board is provided, it shall be construed to mean either the signature of all the members of the board, or the signature of the chairman and an attested copy of the vote of the board authorizing such signature.

If the city possesses no property and is under no obligation created by law or ordinance which would call for the

Omission and addition of departments

establishment or maintenance of some one or more of the departments or divisions set out in the foregoing table the provisions of this section respecting such department or division shall be inoperative; but whenever such property is acquired or such obligations are created by law or ordinance then said provisions shall be in force; and departments or divisions hereinafter created by ordinance for which no provision is herein made shall be in charge of such officer, board or division head as may be prescribed in the ordinance.

The officers, members of boards and division heads are to be appointed by the mayor in the manner and subject to the provisions set forth in section three of this article.

Subordinates

The officers, boards and division heads shall, subject to the provisions of this act, employ such assistants, clerks, experts, laborers, and other employees as may be necessary for the discharge of their respective duties; the employees of each division being employed by the division head, and the employees of each department not specially engaged for the work of any particular division being employed by the officer or board in charge of the department.

Bonds

All officers and employees of the city shall furnish such bonds as may be required by ordinance for the faithful discharge of their duties. The cost of such bonds shall be charged to the appropriate department or division. No officer or employee of the city shall serve as surety on any such bond.

Terms and compensation

SECTION 2. The term of office of the mayor's secretary, of the city solicitor and of the commissioners of public safety, public works, and property shall be during the pleasure of the mayor.

The term of the city clerk shall be the municipal year in which he is appointed or so much thereof as is unexpired at the date of his appointment.

The terms of the other officers and members of boards specified in the second column of the table in section one of this article shall be three years counting from the first day of January in the year of appointment;[25] but the first appointments in the year 19— to the said boards shall be for

one, two and three years respectively so that the term of one member of each of said boards shall expire each year.

The division heads specified in section one of this act shall hold office until resignation, removal or death.

The secretaries of the boards for whom provision is made in said section shall hold office during the pleasure of the board.

Upon the expiration of the term of any office, the incumbent shall, unless his services are terminated by notice or he is removed as provided in section four of this article, continue to perform the duties thereof, and to draw the salary attached thereto until his successor has qualified.

The members of the boards of trustees of public charities and public libraries shall serve without compensation. The other officers, members of boards, division heads and secretaries specified in section one of this article shall receive such compensation as may be prescribed by ordinance.

The other employees of the several departments and divisions shall be employed for such periods and upon such terms as may be fixed by the officer, board or division head employing them.

Appointments [26]

SECTION 3. The mayor's secretary and the other employees of his office, the city solicitor, the public safety, publicworks, property, elections, license, and penal institutions commissioners and the trustees of public charities and public libraries shall be appointed by the mayor by means of a certificate signed by him and filed with the city clerk. The city clerk shall be appointed by a vote of the city council.

(a) Without reference to the civil service commission

The foregoing appointments shall be made by the mayor or by the city council respectively without reference to any other board or authority, and shall become operative upon the appointee's being sworn by the city clerk or a justice of the peace to the faithful discharge of the duties of his office and filing with the city auditor the bond required by section one of this article.

The secretaries of the boards for whom provision is made in section one of this article shall also be appointed

by the respective boards without reference to any other board or authority.

(b) With the assistance of the civil service commission and special examination

The city treasurer, and city auditor, the members of the board of assessors and the division heads for whom provision is made in section one of this article shall be appointed by the mayor in the following manner. During the year 19— and whenever a vacancy in any of said offices exists the mayor shall request the civil service commission [27] to hold an examination to fill the same. The commission shall designate three examiners who shall be experts in or specially familiar with the work and duties of the office in question. The examiners shall select and rank by examination, inquiry and investigation the one or more persons not exceeding three best suited for the office from among those who are found to be qualified. The names of these persons, and if more than one the order in which they rank, shall be sent to the mayor, who shall select one of them and within three weeks notify the commission of such selection. The person thus selected shall then be considered as appointed. If such information has not been received within three weeks, the person who was designated by the examining board as best qualified shall be considered appointed as of the day succeeding said period of three weeks. The expenses incurred by the commission in said examination shall be paid by the [commonwealth*], and reimbursed by the city.

The foregoing provisions shall also apply to the officers, members of boards and division heads of all departments hereafter created and not specified in section one of this article.

(c) Under the ordinary rules of the civil service commission

All other employees of any department or division as also the employees of the city council other than the city clerk shall be employed by the officer, board or division head in charge of the department or division, or by the city council, respectively, after approval by the civil service commission in the manner provided by law ; [28] but architects, civil engineers, lawyers, and other professional men not in the regular employment of the city may be engaged for special work requiring expert knowledge by the

* Or " state ".

officers and boards in charge of the several departments provided the approval in writing of the mayor and of the civil service commission is first secured.[29]

Residence[30]

No person shall be eligible to any office or employment to which the provisions of this article apply unless he is a citizen of the United States; but he need not be a citizen of the [commonwealth*] or a resident of the city.

Exemptions

No law exempting any person or persons from the examinations or rules of the civil service commission or giving any person or persons a preference over other citizens of the United States for employment in municipal service shall apply to the city of ——.[31]

Removals and suspensions[32]

SECTION 4. Every officer, member of a board and division head and every person employed for a definite and unexpired term, except the permanent members of the fire and police divisions of the department of public safety, may be removed by the mayor, officer, board or division head having under sections three and five of this article the power to fill the vacancy thus created by the filing with the city clerk of a written statement setting forth the specific reasons[33] for such removal. A copy of such statement shall be sent to the person concerned, and he shall have the privilege of filing an answer with the city clerk within three weeks; but this privilege shall not affect the removal.[34]

The permanent members of the fire and police divisions of the department of public safety may be removed by the commissioner of public safety after a trial as provided in section three of article IX.

Any officer, member of a board, division head or other employee, including said members of the department of public safety, may be suspended for not more than fourteen days without the statement or trial hereinbefore referred to.

The services of every employee of the city not within the foregoing provisions of this section may be terminated by the person or board appointing or employing him upon written notice to him.

* Or "state".

Vacancies and temporary appointments

SECTION 5. A vacancy in any office subject to the provisions of this article shall be filled in the same manner as in the case of the original appointment; except that an appointment to fill a vacancy in one of the boards specified in the second column of section one of this article, shall be for the remainder of the unexpired term.

When any of the offices specified in the table in section one of this article becomes vacant by death, resignation or removal or the incumbent is suspended, the mayor may designate in writing one of the other officers specified in said table to perform temporarily the duties of the vacant office;[35] but said officer shall receive no compensation for such service in addition to the salary if any attached to his own office. Temporary appointees need not furnish any bond.

ARTICLE VII. APPROPRIATIONS, TAXES AND LOANS

General provisions

SECTION 1. Except as provided in section four of this article no money shall be expended by the city or by any officer, department or division thereof, or by the school committee, unless appropriated in accordance with the provisions of this article for some public purpose authorized by law and not inconsistent with the provisions of this act; but revenues of special funds or other moneys which the city is specifically directed by this act or by law to expend for specified purposes shall be deemed to be appropriated within the meaning of this section without further action under the provisions of this article.

No money shall be borrowed in the name or on the credit of the city except for the purposes, to the amounts and in the manner provided in this article; and any loan, note or certificate of indebtedness issued otherwise than for the purposes and in the manner provided in this article shall be void.

The annual estimates[36]

SECTION 2. Every officer and board and the school committee, shall on or before the fifteenth day of December in each year submit to the city auditor a detailed statement in writing of the appropriations desired for the current expenses of the ensuing year, and of the amounts desired for permanent improvements and other purposes. On or

before the second Monday in January following, the auditor[37] shall transmit to the mayor and to the city council printed statements of all such expenditures during the preceding fiscal year, showing in parallel columns, for each department and item of expenditure, all balances brought forward and credited to the department or item at the beginning of the fiscal year, all receipts during the year from sources of revenue specifically appropriated by law, the appropriations of the mayor and city council during the year, the transfers during the year from and to the same, the expenditures during the year, the outstanding obligations and the unexpended balances if any at the close of the year, the requests for the new year, and his individual estimate of the amounts reasonably required. He shall distinguish between moneys appropriated or received from loans, if any, and moneys appropriated or received from other sources. He shall also report the amount of cash in the treasury at the beginning of the current fiscal year, the obligations or appropriations chargeable thereto and any unappropriated cash balance. He shall also furnish an estimate of the income or receipts of the city during the current year from sources other than the taxes of the current year and loans, a statement of the amounts required during the year for interest, the sinking funds and the payment of debt, and a calculation of the amount which can by law be [raised by taxation or]* borrowed during the year. He shall report such further information and suggestions as he may deem pertinent or useful, or that may be required by ordinance.

The annual budget

SECTION 3. All appropriations to be met from taxes, revenues or any source other than loans shall originate with the mayor, who shall on or before the first day of February of each year unless this be his first year of office (in which case he shall be allowed until the first day of March) submit to the city council his recommendations in the form of a budget for the expenses of the city to be met from taxes and general revenue during the current year and a budget of the expenditures if any of the department of municipal property in excess of the revenue from the

* These words to be omitted unless the " alternative clause " in sec. 6 is adopted.

property of the department. The allowance for each department or division as enumerated in section one of article VI shall so far as salaries, wages, rents, maintenance and other current expenses go, be stated either in a lump sum or single item, or with such detail as may be prescribed by ordinance.[38] He may also submit recommendations concerning the appropriations for the year from sources other than loans to be expended for current expenses or for other purposes. He may thereafter submit supplementary budgets for the current expenses of the city until such time as the tax rate for the year shall have been fixed, and may at any time during the year submit supplementary budgets for expenditures to be met from business or property revenues or from any receipts other than taxes. The city council may, after fourteen and within thirty days after a budget is received, approve, reduce or reject any item, but without the approval of the mayor in writing may not increase any item in a budget nor the total thereof, nor add any item thereto. All items not thus reduced or rejected shall so far as the council goes become effective at the expiration of said period, as also all items reduced or with the written approval of the mayor increased or added. The budget shall then be submitted to the mayor for action by him under section four of article III.

Any appropriation in any year for lighting the public streets or buildings, for the supply of water for public buildings, protection against fire or other municipal purposes, or for the collection or removal of refuse, shall be construed as an appropriation of money to meet the payments due during the year under a continuing contract for these services respectively which has been entered into in accordance with the provisions of section one of article VIII.

[The total of the budgets to be met by taxes and revenue shall not exceed the amount which can by law be raised by taxation during the year, together with the other moneys available for the purpose as estimated by the city auditor under section two of this article].*

* This paragraph to be omitted unless the "alternative clause" in sec. 6 is adopted.

In case the mayor does not before the fifteenth day of February (or if it be his first year in office before the fifteenth day of March) submit the annual budget to the city council, that body may by the affirmative vote of five of its members voting by yeas and nays pass a budget for the current expenses of the city to be met from taxes and revenue during the year, which shall then be submitted to the mayor for action by him under section four of article III.

Expenditures pending passage of the annual budget

SECTION 4. Before the annual budget has been passed the officers and boards may with the approval in writing of the mayor incur liabilities for current department expenses chargeable to the appropriations for the year when passed to an amount not exceeding one quarter of the total appropriations for similar purposes in the preceding year; and the city treasurer may pay the same out of any moneys obtained from sources other than loans and not already appropriated or out of loans incurred in anticipation of taxes as provided in section twelve of this article, and shall when the budget is passed and without further action by the mayor or city council make transfers from the appropriations in the budget to cover these payments.

Transfers

SECTION 5. If a reserve fund is appropriated for current expenses without assignment to any particular department or an appropriation is made for a department without specification of items, the city council may at any time, subject to the approval of the mayor as provided in section four of article III, make transfers therefrom for the current expenses of a department or division or otherwise designate the purposes for which the fund shall be used.

The city auditor may during the month of December with the approval of the mayor apply in such manner as he may determine best for the purpose of closing the accounts of the fiscal year any moneys derived from income or taxes of which no other disposition has been made.

If the purpose for which an appropriation has been made has been accomplished and an unexpended balance remains, or if the officer or board in charge of a department desires to abandon the work for which appropriation has been

made, the said balance or appropriation may at the request of the head of the department be transferred by the mayor and city council to other purposes; provided that if the said balance or appropriation has been obtained by loan it shall be transferred and used only for the purposes specified and in the manner prescribed in sections eight and ten of this article, and no money obtained from loans or revenue in connection with any of the enterprises referred to in section two of article X shall be transferred or used for any other purpose.

The tax levy

SECTION 6. The tax levy for the year shall be declared by the board of assessors before the first day of September. It shall include the state tax, the county tax and all sums required by law to be raised on account of the city debt (the declaration of which three items by the board shall be deemed an appropriation within the meaning of section one of this article), and the appropriations of the mayor and city council chargeable to the taxes and revenue for the current year, less the amount of such revenue as estimated by the auditor, together with such an addition or overlay not exceeding five per cent as may be necessary to avoid fractional divisions of the amount to be assessed and as the auditor may advise is necessary to meet such abatements of taxes as may be made by the assessors and the anticipated difference if any between the actual collections during the fiscal year from revenue and the taxes of the current and preceding years and the estimated amount of the taxes and revenue for the current year.[39]

[Alternative tax limit clause] [40]

[The taxes assessed on property in the city exclusive of the state tax, the county tax and the sums required by law or by this act to be raised on account of the city debt, shall not exceed, except as in this section provided, the sum of —— dollars on every thousand dollars of the assessed valuation of the property, real and personal, subject to taxation by the city for the preceding year, less all abatements to December thirty-first preceding; provided, however, that [in order to effect the change in the fiscal year provided by this act without inconvenience, the taxes upon property for the year —— may exceed such limit of twelve dollars per thousand by such sum not exceeding one dollar

per thousand as the mayor and city council may determine; and provided further that]* the mayor and city council may before the fifteenth day of April in any year appropriate a sum to be raised by taxes in excess of said limit of —— dollars per thousand. The vote for such appropriation shall specify the particular items for which the money is to be spent, and if any such vote is passed and approved the city clerk shall, on or before the first day of May, transmit by mail to every registered voter of the city a printed copy thereof, and a special election, called in the manner provided by law, shall be held on the first Tuesday in May, at which election the following question shall be voted on by ballot:

Shall the following sums be raised by taxation in excess of the amount now allowed by law?

MARK A CROSS X IN THE SQUARE AT THE RIGHT OF YOUR ANSWER

Schools, $10,000	Yes	
	No	
Street Improvements, $15,000	Yes	
	No	

If a majority of those voting on any item declare in favor thereof, such item shall be included in the tax assessment and levy for the year.]

Interest on unpaid taxes

SECTION 7. All taxes unpaid on the first day of November in the year of their assessment shall draw interest thereafter until December thirty-first at the rate of six per cent per annum; and all taxes then unpaid shall draw interest thereafter at the rate of seven per cent per annum.

Purposes for which money may be borrowed

SECTION 8. Money may be borrowed for the acquisition of land, buildings or easements in land for any lawful municipal purpose; for the construction of streets, sidewalks, drainage, bridges and buildings which are to be used for any such purpose, and for additions, extensions and permanent improvements of or to any real estate or public

* To be used only if a change in the fiscal year is effected by the act.

works used for such purpose; and also under the provisions of section twelve of this article in anticipation of taxes. Except under said section twelve no money shall be borrowed for current expenses or for the acquisition of furniture or personal property of any kind other than the machinery required for the city's sewerage, water, gas or electric works.[41]

Periods for which money may be borrowed [42]

SECTION 9. The maximum length of time upon which money may be borrowed for land, easements in land, dams and sewers shall be thirty years; for buildings, masonry bridges and gas and water mains six inches or more in diameter, twenty years; and for all other purposes except loans in anticipation of taxes, ten years. In construing this provision buildings or parts of buildings acquired for street widenings shall be regarded as land.

Requirements of loan orders

SECTION 10. No money shall be borrowed and no loan or certificate of indebtedness shall be valid unless authorized by a vote or order of the city council passed after two readings with an interval of at least two weeks between the two, and one week after the vote at the first reading has been advertised in one or more newspapers published in the city; nor unless the order is approved by the mayor under section four of article III.

All loans shall be offered for public subscription in such manner as shall be prescribed by ordinance.

No transfer of money obtained by loan shall be valid unless authorized and approved in the foregoing manner.

Form of loans and mode of payment

SECTION 11. All loans shall be evidenced by promissory notes or certificates of indebtedness signed by the city treasurer, the city auditor, and the mayor. Such notes or certificates may be payable to bearer or to the order of the purchaser, may or may not be registered, and may or may not have interest coupons, according to the terms of the vote authorizing the loan, or in default of such direction as the city treasurer may determine.

The rate of interest on such notes or certificates shall in each case be determined by the city treasurer, but shall not exceed the rate prescribed in the vote authorizing the loan.

All coupons shall bear the signature of the city treasurer, either in the original or facsimile.

Serial bonds

All loans hereafter issued, except those incurred in anticipation of taxes, shall be payable in annual installments so divided that an equal part of the principal shall fall due each year or in such manner that the total payment each year for principal and interest shall be approximately the same;[43] and the first payment of principal shall be due twelve months after the date of the note or certificate which evidences the loan.[44]

Loans in anticipation of taxes

SECTION 12. Subject to the foregoing provisions money may be borrowed and notes issued in anticipation of the receipts from taxes during the current fiscal year; but the aggregate amount of loans and notes issued for this purpose after January 1, 19—, at any time outstanding shall not exceed the receipts from taxes during the preceding fiscal year, and all such loans and notes issued after the passage of this act shall be paid out of receipts from taxes before the close of the fiscal year in which they are issued.

If upon the first day of January, 19—, there shall be any notes or loans outstanding representing money borrowed in anticipation of taxes prior to the passage of this act, the city may renew or fund the same or any part thereof in five notes of equal amount payable one each year for five successive years.[45]

Sinking funds, premiums and proceeds of sales and betterments

SECTION 13. If at the passage of this act there are loans outstanding for which the city is liable and which are payable at a date more than one year after the passage of the act there shall be included in the tax levy for each year such sum as the city auditor shall in the case of each such loan estimate as sufficient if continued annually until the maturity of the loan together with the amount if any then in the sinking fund for said loan and the estimated accumulations of said fund to pay the said loan at maturity.

All premiums hereafter received from the sale of notes or certificates, all proceeds of sales of land, and all moneys collected from betterments or assessments for street, sidewalk, park or sewer improvements, shall, unless other-

wise specifically appropriated by law or in this act, be paid into the sinking funds, giving the preference to those for the bonds latest to mature, until there is in said funds an amount sufficient, together with the estimated accumulations thereof, to pay all the sinking fund bonds outstanding; and when all the sinking fund bonds have been paid or there is in all the sinking funds an amount sufficient with the estimated accumulations thereof to pay the bonds at maturity, such premiums, proceeds and collections shall be used to meet the payments next to fall due on account of the principal of outstanding notes or certificates of indebtedness issued in the form provided by the last paragraph of section eleven of this article.[46]

In selecting the sinking fund or loan to which these receipts shall be applied, preference shall in every case be given to the funds created or loans issued for or in connection with the acquisition of the property, or the doing of the work in connection with which the money is received; and all receipts from sales of property subject to the provisions of sections two, three and ten of article X which are not required for the sinking funds, if any, established in connection with the enterprises referred to in said sections of article X shall be paid into the construction fund provided by section six of said article.

Money belonging to the sinking funds shall be invested by the city treasurer in such state, town or city bonds, notes or certificates of indebtedness, other than the bonds, notes or certificates of the city of —— at their market value at the time of purchase as he and the mayor shall in writing approve; or shall be loaned to responsible banking institutions at the going rate of interest.[47] Securities in the sinking funds may from time to time be sold by the treasurer with the written approval of the mayor, and the proceeds shall be invested or loaned in the manner herein provided.

The sinking fund statement provided for in section two of this article shall be prepared on the basis of an exact calculation of the amounts required, but shall not be less than the amounts, if any, specified by law or in the orders authorizing the respective loans.

SECTION 14. Exclusive of loans for water, gas, electric works, or other property acquired under the provisions of sections two, three and ten of article X, of loans heretofore issued by special authority of the legislature outside the debt limit, and of any notes which may be issued under the provisions of section twelve of this article in anticipation of taxes or to replace debt incurred in anticipation of taxes, the net debt of the city outstanding at any time shall not exceed —— per cent on the average assessed valuation of all property subject to taxation by the city for the three years ending with the thirty-first day of December next preceding, less abatements to that day. **Debt limit**[48]

SECTION 15. No loan order or item in a loan order shall be valid unless such loan or item has been approved by the state board having jurisdiction over municipal loans.[50] **Approval by state board**[49]

ARTICLE VIII. GENERAL RULES FOR THE CONDUCT OF BUSINESS

SECTION 1. Subject to the provisions of article VII contracts for work may be made, orders for materials given and leases of property taken by the several departments for their respective uses in the manner and under the conditions hereinafter set forth. **Contracts, purchases and leases**

Orders for materials and contracts for work shall be in writing in such form as may be approved by the city solicitor, shall be signed by the officer or board in charge thereof, and if involving more than three hundred dollars, shall be approved in writing by the mayor, and a copy thereof shall be deposited with the city auditor. Additions to, or alterations in, a contract for materials or work shall be in writing, shall be signed by the officer or board in charge of the work, and shall be approved in writing by the mayor.[51] **Contracts and orders**

Leases of property for municipal purposes shall be in writing in such form as may be approved by the city solicitor, shall be signed by the officer or board hiring the property in question and if involving the payment of more than three hundred dollars in any one year shall be approved in writing by the mayor, and a copy thereof shall be deposited with the city auditor. **Leases**

Long-term contracts

A contract for work of a continuing character, such as the lighting of the public streets or buildings, the supply of water for public buildings, protection against fire or other municipal purposes, or the collection and removal of refuse, which is to extend over a series of years, and which involves the payment of money out of the appropriations of more than one year, shall be limited to ten years, and shall not be valid unless after signature and approval as aforesaid it is approved by the city council after a public hearing of which at least seven days' notice shall be given in one or more newspapers published in the city.[52]

Advertisement and lowest bidder [53]

All contracts for materials or work exceeding one thousand dollars in amount shall be awarded to the lowest bidder [54] after public competition and advertisement in accordance with such rules not inconsistent with the provisions of this section as may be prescribed by ordinance, unless the city council, upon the advice in writing of the officer or board issuing the advertisement and with the approval in writing of the mayor, authorizes by an order read twice with an interval of at least one week between the two readings the award of the contract to some person other than the lowest bidder; but every officer and board shall have the right to reject all the bids and to advertise again, and all advertisements shall contain a reservation of this right; provided, moreover, that if an emergency exists which in the written opinion of any officer or board requires that work be done, or materials be bought without the delay involved in advertising the same as prescribed by ordinance, the mayor may in writing authorize the award of the contract without advertisement, in which case the mayor shall on the same day report the facts in writing to the city council, together with the reasons for dispensing with advertisement.

In determining whether contracts or orders for materials or work exceed one thousand dollars in amount regard shall be had to the true nature of the materials or work and to the purpose of the contracts or orders, and the same shall not be so divided or otherwise treated as to make a number of contracts or orders not exceeding one thousand dollars in amount out of work or purchases which upon principles

of ordinary business prudence should be done or made under contracts or orders exceeding one thousand dollars in amount.[55]

Residence of bidders

No bid for materials or work shall be rejected on the ground that the person, firm or corporation making it is not domiciled or organized in the city or state; and no such limitation shall be inserted in any advertisement.[56]

Enforcement

Every contract, lease or order for materials or work, and every alteration in a contract or order not executed in accordance with the provisions of this section shall be voidable upon petition as provided in section two of article XI.[57]

Work that must be done by contract [58]

SECTION 2. Repairs and work necessary for the maintenance of city property, including additions, alterations and improvements to an amount not exceeding in any case one thousand dollars, may be executed by day labor or by contract; but work of original construction and additions, alterations and improvements costing in any case more than one thousand dollars shall be let out by contract. In determining what is original construction and what the cost of an addition, alteration or improvement will be, regard shall be paid to the true structural character of the work, and the same shall not be so divided or otherwise treated as to bring within this sum the cost of work which in its true structural character will cost more; and no construction work which is of annual recurrence, such as the extension of water mains, gas pipes and electric wires, shall be done by day labor to a greater amount in any year than one thousand dollars.

Collusive profits

SECTION 3. It shall be unlawful for the mayor or for a member of the city council or for any officer or employee of the city directly or indirectly to make a contract with the city, or to receive any commission, discount, bonus, gift, contribution, or reward from, or any share in the profits of any person or corporation making or performing such contract, unless such mayor, member of the city council, officer or employee, immediately upon learning of the existence of such contract or that such contract is proposed, shall notify in writing the mayor and the city coun-

cil of the nature of his interest in such contract, and shall abstain from doing any official act on behalf of the city in reference thereto. In case of such interest on the part of an officer whose duty it is to sign such contract on behalf of the city, the contract may be signed by any other officer of the city duly authorized thereto by the mayor, or if the mayor has such interest, by the city clerk; provided, however, that when a contractor with the city is a corporation or a voluntary stock association, the ownership of less than five per cent of the stock or shares actually issued shall not be considered as involving an interest in the contract within the meaning of this section, and such ownership shall not affect the validity of the contract unless the owner of such stock or shares is also an officer or agent of the corporation or association, or solicits or takes part in the making of the contract.

Enforcement

A violation of any provision of this section shall render the contract in respect to which such violation occurs voidable upon petition as provided in section two of article XI.[59]

Moneys belonging to the city

SECTION 4. All moneys received by any officer or employee of the city or by the school committee or any member or employee thereof for or in connection with the business of the city, and all costs, fees, emoluments or profits of whatsoever kind received in connection with said business shall forthwith be paid to the city treasurer.

Appropriations not to be exceeded [60]

SECTION 5. No officer shall, except as authorized by section four of article VII expend intentionally in any fiscal year any sum in excess of the appropriations duly made for his respective department, or involve the city in any contract for the future payment of money in excess of such appropriations; but nothing in this section shall sanction the expenditure of money for any purpose not authorized by this act.

Payments for salaries, wages, materials and work

SECTION 6. Payments by the city for materials or work, other than payments to persons employed upon a salary or by the day, shall be made by the city treasurer upon certificates that the money is due, signed by the officer or board in charge of the work, and approved in writing by the city

auditor and the mayor, and in return for a receipt signed by the person entitled to receive payment.

No officer or member of a board shall intentionally certify, and the city auditor and mayor shall not intentionally approve an amount greater than the sum actually due under the contract or order.

Payments for salaries, whether yearly, monthly or weekly, shall be made as soon after the first day in each month as practicable upon pay-rolls certified by the officers and boards in charge of the several departments, and approved in writing by the city auditor and the mayor, and in return for a receipt signed by the persons entitled to receive payment.[61]

Payments for day wages shall be made each week for the work done in that or the preceding week upon pay-rolls certified by the officers and boards in charge of the several departments and approved in writing by the city auditor and the mayor and in return for a receipt signed by the person entitled to receive payment.

Payment of claims [62]

SECTION 7. Claims against the city not certified and approved as provided in section six of this article, and not exceeding five hundred dollars in amount, may be paid if authority is given by the mayor and city council and the claimant has filed with the city clerk an agreement to accept the sum in full satisfaction of the claim, and the city solicitor has filed with the city auditor a written opinion that the claim is a valid one or is one which in his judgment may properly be compromised.

No such claim exceeding five hundred dollars shall be paid except upon execution issued after judgment against the city in a suit brought to recover the same, and judgment shall not be entered for the plaintiff by consent unless the parties are at issue and the amount of the judgment has been approved by the mayor and city council upon the written recommendation of the city solicitor.

Records and accounts

SECTION 8. Every officer and board and the school committee shall keep in such form as shall from time to time be prescribed by the city auditor, proper books, and accounts of the receipts and expenditures of the depart-

ment, of the obligations incurred, and of the work done; which books and accounts shall at all reasonable times be open to the inspection of the mayor, the city auditor and any member of the city council.

Every officer and board and the school committee shall submit the estimates required by section two of article VII of this act; shall, on or before the fifteenth day of January in each year, submit to the mayor and the city council a report describing concisely the work and financial operations of the department during the preceding fiscal year;[63] and shall, on or before the fifth day of May in each year submit to the city auditor a list of the employees of such officer or board on the thirtieth day of April preceding, giving for each employee name, residence by street and ward, designation, compensation and date of appointment or employment.

ARTICLE IX. DUTIES OF PARTICULAR DEPARTMENTS

In general[64] SECTION 1. The several officers, boards and division heads shall exercise all the powers conferred and perform all the duties imposed upon them by the other articles of this act, or by any general or special law or ordinance not inconsistent with the provisions of this act, and shall in particular perform the duties set forth in this article and in article VII.

Law department SECTION 2. The city solicitor shall prosecute or defend all actions and proceedings brought by or against the city or any of its officers; but may employ special counsel under the provisions of section three of article VI. He shall, when requested, advise the officers and departments of the city in respect to their powers and duties, and, if requested, shall give written opinions upon questions brought before him by the mayor, city council, school committee, or any officer or board. He shall prepare proper forms of contracts, notes and other obligations, proposals for public work, and such legal instruments as may be needed by any department and shall endorse on each his approval of the form and correctness thereof.

SECTION 3. The commissioner of public safety shall make such rules as he sees fit for the administration of his department; but the number of police officers and firemen and their salaries shall not exceed the respective number and salaries established by ordinance. **Public safety department**

Subordinate members of the department may be tried before a board of three superior officers appointed by the commissioner upon written charges made by another officer or any citizen, but the commissioner may dismiss trivial charges without a trial. Members of the department on trial may be assisted by counsel. The trial board shall forward its findings to the commissioner, who shall take such action as he deems fit, which action shall be final. The membership of the trial board shall be changed from time to time.

The vital statistics of the city shall be prepared by the board of health provided in section one of article VI; and the records thereof shall be deposited with the city clerk.

The commissioner shall be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings; and in all matters affecting the inspection and regulation of weights and measures used in the city.

SECTION 4. The commissioner of public works shall have the direction and control of the construction, maintenance, repair, and lighting of the public streets, ways and sidewalks; of the construction, maintenance, and repair of the public buildings; of the construction, maintenance, and repair of the public sewers; of the construction, maintenance, and repair of the public bridges, canals, tunnels and culverts; of the construction, care, superintendence, and management of the public parks and grounds, and of the shade and ornamental trees growing thereon; and of the collection and disposal of refuse. **Public works department**

The superintendent of streets shall under such provisions as may be established by ordinance issue permits for all persons or corporations who desire to dig in or otherwise obstruct the public streets for any lawful purpose, and shall see that the same are restored to their original condi- **Superintendent of streets**

tion and that all fees and penalties for such openings are collected and paid to the city treasurer.

City engineer

The city engineer shall give his whole time to the city, and shall attend to all the engineering work of the city. He shall, at the request of the mayor, city council, commissioner of property or commissioner of public works, prepare plans, estimates and specifications for the construction or alteration of streets, sidewalks, bridges, sewers, conduits, water works or any other work within the training of a civil engineer. He shall assist the city solicitor in defending the city against suits and claims brought against it for damages due to alleged defects in the public ways or other causes; and may be called on by the mayor, the city council, the school committee or any department for advice or services such as a civil engineer may be expected to furnish.

Penal institutions department

SECTION 5. The commissioner of penal institutions shall manage and control all correctional and reformatory institutions and agencies belonging to the city.

Treasury department

SECTION 6. The city treasurer shall collect and receive all moneys due the city, including taxes, rents, water rates, and receipts from other productive enterprises, assessments for sewers, drains, sidewalks and other purposes, loans and all other sources whatsoever, and shall have the custody of all moneys and securities belonging to the city except as provided in section twelve of article X.

He shall deposit the money of the city in such banks as he may, with the approval of the mayor, select, except banks in which he or the mayor is an officer, director or stockholder, unless the city council, after notice of the facts, shall permit deposits in banks in which he or the mayor is interested. He shall have the custody of the sinking funds of the city and shall invest them in the manner provided by section thirteen of article VII. He shall once a month, or oftener if required, lay before the mayor and the city council a detailed statement of the condition of the treasury and of all moneys received and paid by him during the preceding month.

He shall pay out money for salaries, wages, materials, and work only on certificates as provided in section six of article VIII.

Accounting department

SECTION 7. The city auditor shall have general supervision of the books, accounts and reports of the several departments, shall from time to time prescribe the manner in which the same shall be kept, and shall keep an independent set of books showing the receipts, appropriations, expenditures, obligations of the several departments, and issue warrants for the payment of all claims against the city treasury.

The auditor shall examine all pay-rolls, claims, bills, and demands, shall see that they are in proper form, correctly computed and duly authenticated. He may require the claimant to make oath to the validity of a claim or bill. He may investigate any claim, and, if he thinks it is erroneous, fraudulent or otherwise invalid, shall withhold his approval.

Annual report [65]

During the month of January in each year the auditor shall submit to the mayor and to the city council a printed report of the financial operations of the city during the preceding year, with such data for previous years as may be useful for comparisons. This report shall include a table showing the population of the city according to the state and federal census during the past thirty years; tables showing for each of the ten preceding years the [number of polls assessed, the]* assessors' valuation of real and personal estate, the aggregate appropriations payable from taxes or revenue, the state taxes, the county taxes, the total tax levy upon property and the tax rate; a table showing separately the receipts [from poll taxes]* from taxes upon property and from revenue, applicable to current expenses during each of said ten years, and separately the percentage of the taxes upon [polls and]* property levied in each of said ten years which was received before the first day of January in the succeeding year; a table showing the aggregate receipts from taxes and revenue, the aggregate appropriations, including transfers, chargeable thereto, and the disposition of the surplus, if any, for each of the preceding ten fiscal years; tables showing for each department, division or item for which money was appropriated, the appropriations, including transfers, the receipts from

* For use in states where a poll tax is assessed.

revenue and the expenditures during each of the preceding ten fiscal years; tables showing all the loans authorized and the loans issued by the city since its incorporation, the payments into the sinking funds, the payments on account of the principal of the said loans, and the amounts due on the same, together with the sinking funds applicable thereto, at the close of the fiscal year preceding the report, said data being given separately for each fiscal year and each loan, and also in summarized form; a table showing the gross and net indebtedness of the city at the close of each fiscal year since its first incorporation for other purposes than water, gas, electric and other productive enterprises, and the percentage of such net debt to the assessors' valuation of property for the year; a list of all outstanding obligations with the amount maturing each year, and the rate and amount due for interest thereon [a list of all loans authorized, and of all loans issued, by special authority of the legislature outside the debt limit established by general law, and a statement of the gross debt, sinking funds and net debt at the close of each fiscal year outside the said limit]† a list of all loans authorized, but not issued at the close of the fiscal year; and a list of all loans issued in anticipation of taxes during each of the preceding ten fiscal years, giving the date for each loan and payment, together with the amount of such debt, if any, outstanding at the close of the fiscal year.

The annual report shall also include tables showing the financial condition and operation during the year of the water, gas, electric, and other productive enterprises belonging to the city, which tables shall be prepared in the manner prescribed in section nine of article X for the keeping of the accounts of these enterprises.

The report shall also include copies of the statements required of the auditor by section two of article VII, and of all the appropriation and loan orders passed during the year; a full statement of the investment of all trust and sinking funds; and such further information as may be prescribed by ordinance.

† For use in case there is a debt limit.

If any state, county or district loans are payable by the city either directly or to the state, county or district in part or wholly as to either principal or interest, the report shall include a full statement of such loans, gross and net, outstanding at the close of the fiscal year and a calculation of the proportionate part of said loans thus payable by the city.[66]

The report shall contain a statement of all the property of the city not used or kept for any municipal purpose and available for sale.

No statement of assets and liabilities which includes property owned by the city and used or kept for any municipal purpose shall be made.[67]

[The auditor shall also prepare a report of the receipts and expenditures of the year in such form as may be required by law for the use of any state authority and, if required by law or ordinance, shall include the same in condensed form, in his annual report.] * [68]

Monthly statements

The auditor shall at the beginning of each month submit to the mayor and to the city council a printed statement showing for each department or item in the appropriation orders the total receipts, credits and expenditures to the close of the preceding month, and the unexpended balance to the credit of the department or item on the first day of the month.

List of employees

During the month of May in each year the auditor shall transmit to the mayor and to the city council a printed list of the employees of each department on the thirtieth day of April preceding, stating for each employee name, residence by street and ward, designation, compensation and date of appointment for employment.

Stationery

The city auditor shall have charge of all stationery bought and of all printing ordered for the several departments. He shall, subject to the provisions of article VIII, order the supplies and make the contracts required by the several departments and shall apportion the cost between the same according to their respective requirements.

* For use in case there is such a law.

Recording department

SECTION 8. The city clerk shall be clerk of the city council, and shall keep a journal of all its votes and proceedings. He shall engross all the ordinances passed by the mayor and city council in a book provided for that purpose, and shall add proper indexes, which book shall be deemed a public record of such ordinances.

He shall administer and record the oaths provided in section two of articles III, IV and V, and shall file all bonds required by section one of article VI. He shall have the custody of the vital records of the city as prepared by the board of health and of such other records and papers as may by ordinance be intrusted to his care.

Assessing department

SECTION 9. The board of assessors shall assess each separate parcel of real estate and item of personal property at its fair cash or market value on the —— † day of —— † in each year, meaning the sum which the parcel or item would probably have brought in cash on or about that date if the owner had offered it for sale and had used reasonable efforts to secure a customer. In assessing improved real estate, the board shall consider the net rents or net rental value of the property as it stands, as well as the value of the land and the cost and condition of the buildings, and shall assess as the value of the buildings the amount by which the same increase the market value of the land.[69]

The board of assessors shall, when requested, prepare the estimates as required in section four of article IV for use by the mayor and council for the acquisition of real estate by the city.

Licensing department[70]

SECTION 10. The board of license commissioners shall issue all licenses and permits as provided by statute, ordinance, or this act, except the permits for street openings referred to in section four of this article. A record shall be kept in the office of the board of all such licenses and permits, and shall be open for public inspection.

Election department

SECTION 11. The board of election commissioners shall have the powers conferred by law upon such officers of cities. It shall have all the powers conferred and be sub-

† The date differs in the different states.

ject to all the duties imposed by law upon city clerks, boards of election commissioners, and other municipal officers and boards in respect to the registration of voters and the conduct of elections in the city.

It shall also have full charge of the preparation of the voting lists and of the drawing of jurors, and shall have all the powers conferred and be subject to all the duties imposed by law upon boards of aldermen or any municipal officer or board in respect of such lists and jurors.[71]

Public charities department

SECTION 12. The board of public charities shall have all powers vested by law or ordinance in officers or boards for the control and maintenance of charitable institutions, the administration of poor relief, the control and management of institutions for the care of the insane, and the establishment, management and care of cemeteries.

Public library department

SECTION 13. The board of trustees of the public library shall have all powers vested by law or ordinance in officers or boards for the establishment, management and care of free libraries.

ARTICLE X. MUNICIPAL PROPERTY

Property used for ordinary municipal purposes

SECTION 1. Real estate and other property belonging to the city and used or held for the exclusive use of any department shall be in charge of that department. Property used by more than one department, buildings used for general municipal purposes, real estate belonging to the city and rented for commercial purposes, and real estate belonging to the city and not used or kept for any municipal purpose shall be in charge of the commissioner of property, who shall have the management, care, repair and leasing of the same.

Leases of property in charge of the commissioner shall be in such form as may be approved by the city solicitor and shall be signed by the commissioner and approved in writing by the mayor. No such lease shall be valid if it is for a term of more than one year unless after signature and approval as aforesaid it is approved by the city council after a public hearing of which at least seven days' notice shall be given in one or more newspapers published in the city.

Real estate belonging to the city and not used or required for any municipal purpose may be sold by the commissioner with the approval in each case of the mayor and city council.

Property used for business enterprises

SECTION 2. The commissioner of property shall have charge of all water works, gas works, electric works, markets, ferries, docks, wharves, and other enterprises at any time belonging to the city in connection with which rents, tolls, rates or fares are charged to private customers, and of all property belonging to the city and used or held in connection therewith or procured from said rents, tolls, rates or fares or from any loans issued for the benefit of said enterprises. The commissioner shall establish a separate division for each of said enterprises which shall be placed in charge of a manager appointed as provided in section three of article VI; but the manager of the gas works may also be appointed manager of the electric works, and if in the case of any of said enterprises the entire property is operated by lease or contract, the commissioner may dispense with the appointment of a manager for that division. The accounts of the department shall, so far as practicable, be kept separately for each division.

No lease of any of said enterprises except markets, docks, and wharves nor any contract for the operation thereof shall be made without the special consent of the legislature.

Establishment of water, gas or electric works

SECTION 3. If on the passage of this act the city does not own a water, gas or electric light or power plant but shall hereafter desire to acquire such a plant and to engage in the business of furnishing water, gas or electricity, as the case may be, for municipal and private use, it shall have the right to do so and subject to the provisions of this act to

Votes of mayor and city council

borrow money for the purpose of paying for any such plant and extensions thereof; provided that the city council shall in two successive years vote to acquire and operate such a plant, the said votes being separated by a period of at least one year and being both approved by the mayor within the fifteen days allowed for his approval of votes involving the expenditure of money under section four of article III, and provided further that the said votes are approved by

a majority of the voters present and voting at a special election called and held in the manner prescribed by law as modified by this act, within sixty days after the submission of the second of said votes duly approved by the mayor to the ——* hereinafter in this article called the state board. Said board shall examine the question and shall within thirty days after the submission of the said second vote send to the mayor and to the city council a written opinion or report on the advisability of the action contemplated by said vote. This report shall be published in full in two daily papers published in the city and a printed copy shall be mailed to each registered voter; such publication and mailing to be done at least three weeks before the special election. In case the report of said board is not made, published and mailed as hereinbefore provided the court may on petition of ten taxable inhabitants adjourn the special election until a date three weeks after the report has been received and published and mailed. If at the special election a majority of the votes cast upon the question submitted are in the affirmative the city shall have the right to acquire a plant and to borrow money therefor and to operate the same as in this act provided.[73]

Special election

Report of state board[72]

If at the passage of this act the city owns a water, gas or electric works or acquires one under the provisions of this article, the commissioner of property may from time to time with the approval of the mayor and city council extend, enlarge and improve the same and subject to the provisions of this act may borrow money for the purpose.

Extensions

No loans shall be issued to acquire a water works, gas works or electric works or to extend, enlarge or improve the same except as provided in article VII, and in applying the provisions of section nine of said article if the loan is for the purpose of acquiring property which belongs partly to one class and partly to another class according to the classification set out in said section, it shall be divided accordingly. If the property is acquired by judicial valuation as hereinafter provided, the loans shall be divided according to the items of the award. In other cases the

Loans

* Here insert the title of the state board, if any, having the supervision of the operations of water, gas and electric works. The title varies in the different states.

division shall be made by the commissioners with the approval of the state board.

Acquisition of existing plants [74]

SECTION 4. If at the date of said special election any individual or corporation has a lawful charter or franchise for supplying, distributing or selling water, gas or electricity in the city or any part thereof, which charter or franchise provides that if a plant is established by the city or its predecessors in title for the distribution of the commodity supplied, distributed or sold by said individual or corporation, the property or franchises of said individual or corporation shall be acquired upon certain terms and conditions set forth in said charter or franchise, an affirmative vote at said election shall be deemed to be a compliance with said charter or franchise, and all questions of transfer and payment shall be adjusted as in said charter or franchise provided.

(a) Under a charter contract

(b) Under an exclusive franchise

If at the time of said election any individual or corporation has a lawful and exclusive charter or franchise for supplying, distributing or selling water, gas or electricity in the city or any part thereof, and said charter or franchise contains no provision for acquisition by the city or its predecessors in title of the property or franchises of the said individual or corporation, an affirmative vote at said election shall be deemed to be a taking by the city of the property and franchises of such individual or corporation used or held for the purpose of supplying, distributing or selling the commodity referred to in the votes of the city council, the said property and franchises shall immediately vest in the city, and the same shall be paid for in the manner and under the procedure provided by law when private property is taken for public uses.

(c) If no charter contract or exclusive franchise exists

If at the time of the approval by the mayor of the first of the two votes of the city council mentioned above, any individual or corporation is lawfully operating in any part of the city a plant for supplying, distributing or selling the commodity referred to in said vote, under a charter or franchise which is not exclusive and which contains no provision for acquisition by the city or its predecessors in title of the property or franchises of the said individual or corporation, such individual or corporation, hereinafter

called the owner, may within six months after the approval of the said first vote offer the plant to the city for a specified price.

Offer by the owner

The offer shall be in writing signed by the owner of the plant if an individual, and if a corporation by its president or treasurer supported by a vote of the directors duly certified. The offer shall contain a schedule of the property offered together with a statement of all mortgages, liens, leases and contracts to which it is subject or of which it has the benefit, and shall be binding on the owners and the city if accepted by the mayor and city council within thirty days after an affirmative vote at the special election hereinbefore provided; and the sum named in the offer shall be paid by the city to the owner with interest from the date of the election. The price named in the offer shall not be binding on the owner if the offer is not thus accepted; and if a second vote is not passed and approved as and within the time hereinbefore set out, or if the vote at the special election is in the negative, the entire offer shall be void.

If the vote at the special election is in the affirmative the property mentioned in the offer shall thereupon vest in the city; possession thereof shall at once be taken by the commissioner of property; and the right of the owner to use the public streets or places or any of them for pipes, conduits, wires or other machinery for distributing the commodity referred to in said votes shall cease and determine.

If the offer is not accepted within thirty days after an affirmative vote at said election the price to be paid for the property shall be determined by three commissioners to be appointed by the court upon petition of the owner or the city, and the price thus determined shall be paid by the city to the owner with interest from the date of said election.

The offer shall not include any property or right of any kind except tangible personal property, real estate, and easements and other incorporeal rights of property in or over land or water. It shall not include any right or franchise to use or occupy the public streets or places. If, however, the owner or his predecessors in title have paid to any public authority for the use of the public streets

and places in the city any cash sum as compensation once for all and not by way of annual compensation or rent, such sum without interest may be included, as a separate item in the offer.

Additions to plant subsequent to offer

The property vesting in the city upon an affirmative vote at the special election shall include all property, defined as above, properly added to the plant between the date of the offer and the date of the election; and the amount by which the said additions increase the value of the plant at the date of the election above the sum named in the offer shall be paid by the city either as determined by mutual agreement of the owner and the mayor and city council or in default of such agreement by the commissioners appointed as aforesaid.

Basis of award [75]

In case the price to be paid by the city for the plant is determined by commissioners the same shall be fixed at the fair market value at the date of said election, for the purpose of supplying and distributing or selling the commodity referred to in said votes, of the tangible personal property, real estate, easements and other incorporeal rights of property in or over land or water belonging to the owner and used or reasonably held for said purposes, not including, however, any right or franchise to use or occupy the public streets or places, or any right to sell the commodity dealt in, or any other statutory privilege; and no account shall be taken of the income, gross or net, which the owner obtained or could obtain from the sale or delivery of the said commodity; but the cost of producing or conducting and distributing the said commodity shall be taken into account. The award of the commissioners shall in no case exceed the cost to procure and install a plant equivalent in capacity, efficiency and economy of operation to that in question after making due allowance for the physical condition of the latter and for the relative cost of operating the two plants. Interest during construction and all other elements of value not dependent on the earnings of the plant or on the possession of rights in the public streets and places shall be considered, and the foregoing reference to the cost of an alternative plant shall be regarded as a limiting direction, not as one to be followed

in all cases; the intent being that the owner shall receive for his plant the sum which the commissioners conclude that a reasonable purchaser having the necessary street franchises but no plant would be willing to pay for the plant in question, irrespective of earnings and franchises, rather than purchase a new one or abandon the undertaking. Provided, however, that if the owner or his predecessors in title have paid to any public authority for the use of the public streets and places in the city any cash sum as compensation once for all and not by way of annual compensation or rent, such sum shall be included without interest in the award if it was included as a separate item in the offer.

Property to be paid for[76]

The commissioners shall have the right to exclude from the valuation and award such property as at the date of the election was not used and was not being reasonably reserved for the purpose of supplying or distributing or selling the commodity referred to in said votes; and any property thus excluded from the award shall forthwith be conveyed or transferred by the city to the owner, who shall not be entitled to any compensation for the possession of said property by the city. The commissioners shall have the right to include in the award and order to be transferred to the city any land, buildings, machinery or rights of property belonging to the owner at the date of the election which are reasonably necessary for present or future use in connection with the property offered but which were not included in the offer; and such property shall forthwith be conveyed or transferred by the owner to the city. The commissioners shall have the right to exclude from the valuation and award any lease or contract which in their opinion is a disadvantageous one, or they may include the said lease or contract and make due allowance for it in the award; in which event the said lease or contract shall vest in the city.

The award shall state the value of the property both at the date of the offer and at the date of the special election, and shall be divided into items corresponding so far as practicable with the various purposes specified in section nine of article VII.

Addition to or subtraction from the appraisal [77]

If the value of the property at the date of the election exceeds the sum named in the offer as the price the owner would take, an amount equal to five per cent of said sum shall be added to the award; and if the said value is less than the sum named in the offer an amount equal to five per cent of said sum shall be deducted from the award.

Interest

Interest on the award, thus increased or diminished as the case may be, from the date of the special election shall be paid by the city to the owner or his legal representatives.

If no offer is made

In case the owner makes no offer as hereinbefore provided within six months after the approval of the said first vote of the city council he shall continue in possession of the property and franchises then belonging to him, subject to all laws then or thereafter in force affecting the same; and the city shall be under no obligation to acquire the same or any part thereof, but after an affirmative vote at the said special election may proceed to establish a plant as provided in section three of this article.

Mortgages, etc. [78]

All property transferred to the city as aforesaid shall vest in the city free and discharged of all mortgages and liens; but all creditors of the owner, whether secured by mortgage or not, shall be entitled to become parties to the court proceedings, if any, to determine the value of the property, and the commissioners shall determine in accordance with the ordinary rules of law to whom the award shall be paid. In case there are no court proceedings to determine the value of the property and there are any mortgages of record on any part of the property at the time of the special election, the purchase money shall be paid to the mortgagees to the amount necessary to extinguish their liens if such amount is less than the purchase money. If the amount of said mortgages exceeds the purchase price the money shall be paid to the mortgagees in order of priority.

Decision final on facts [79]

The decision of the commissioners shall be final on all questions as to the property to be included in the transfer and award and on all questions of value; but they shall report to the court their award, together with their rulings on all questions of law, including the basis of valuation adopted, that may be raised by any party to the case. The

court shall affirm the award unless of the opinion that some error of law has been committed by the commissioners to the substantial injury of any party, in which case the court shall remand the cause to the commissioners for further consideration in accordance with the opinion of the court.

Management of municipal works

SECTION 5. The commissioner of property shall keep accurate accounts of the first cost of the property in his charge and of all extensions and enlargements thereof, divided as accurately as is practicable between the different divisions of the department, and the aggregate cost of the property, including such extensions and enlargements, acquired for the water, gas and electric divisions respectively prior to the first day of January in each year shall constitute the cost of the respective works upon which taxes and depreciation shall be reckoned for that year as hereinafter provided.

Cost of works

Depreciation [80]

The depreciation of the works shall be made good by the payment annually by the commissioner to the construction fund hereinafter referred to of a certain percentage of the cost of the works as hereinbefore defined, namely, two per cent for the water works, three per cent for the gas works, and five per cent for the electric works, which amounts shall be charged to the annual expense of the respective divisions.

Taxes [81]

The commissioner shall pay annually in the month of October to the city treasurer a tax at the same rate as that levied on the property of the citizens upon the difference between the cost of the property belonging to the water, gas and electric divisions of the municipal property department respectively ascertained in the manner hereinabove provided and the aggregate payments for depreciation on the property of the respective divisions as hereinbefore provided, and said tax shall be charged to the annual expense of the respective divisions.

Insurance [82]

Adequate insurance against fire and liability for injuries to person or property, including liability under any law for workmen's compensation applicable to the city, shall be carried by the commissioner in the name of the city, and all sums paid for premiums, damages, or compensation in

any year shall be charged to the annual expense of the respective divisions.

Payments by other departments [83]

Each department or division of the city government using water, gas or electricity furnished by the municipal property department shall pay out of its annual appropriation for current expenses the same rates as private individuals pay, except that the fire division of the department of public safety shall pay for the water used in extinguishing fires and on account of the extra cost of the works due to the fire service a sum equal to ——, and that the department of public works shall pay for the gas and electricity used for lighting the streets, parks, playgrounds and public places such sum per annum as fairly represents the commercial value of the service as determined by the mayor and city council in the annual budget.[84] The said charges to the several departments for the use of water, gas or electricity shall be paid by the said departments respectively to the municipal property department monthly upon bills rendered by the commissioner of property; the annual charges for fire service and public lighting as above set out shall be paid in equal monthly installments; and the said amounts shall be credited to the annual income of the respective divisions of the municipal property department.

Total annual expense

The entire annual cost of maintaining, repairing and operating the works, including all current repairs, renewals of current or annually recurrent necessity, rents, taxes, insurance and depreciation, and the annual payments for interest,[85] sinking fund and debt requirements, shall be charged to the annual expense of the respective divisions of the municipal property department. If any money is paid to any person, or to any corporation public or private, or to any public authority, for water, gas or electricity or for the conveyance thereof, the amounts thus paid shall be charged to the annual expense of the respective divisions.[86]

Annual estimates

On or before the fifteenth day of December in each year the commissioner shall submit to the city auditor a detailed estimate of the income and expense during the ensuing year of the several divisions of his department, and shall specify the amounts which he desires to have appropriated from the tax levy for any of said divisions.

The revenues of the several divisions of the department shall be applicable to the expenses of the respective divisions without appropriation or vote by the mayor and city council.[87]

The construction fund [88]

SECTION 6. The annual payments for depreciation and the surplus revenue of the water, gas or electric divisions of the department, meaning the excess, if any, of the receipts from rates and other departments over the annual expense as hereinbefore defined shall at the close of each year be paid by the city treasurer into a separate fund to be called the construction fund, which fund shall be divided and kept separately for each of said divisions. All sums received from insurance companies for the loss of property and the proceeds of all sales of property belonging to any division shall be paid into this fund.

The money belonging to said fund shall, until drawn on by the commissioner of property as hereinafter provided, be deposited or invested in the manner provided in section thirteen of article VII respecting moneys in the sinking funds; and the interest or dividends on said deposits and investments shall be added to the principal of the fund.

The commissioner shall have the use of this fund to defray the cost of replacing such parts of the property in his charge as have become worn out or otherwise inefficient, and the cost of replacing which is too great to be properly chargeable as maintenance, repairs or renewals to annual expense, and to defray the cost of such purchases, extensions and enlargements as might otherwise under the provision of this act be met by loan. No part of the fund shall, directly or indirectly, be used for any payment chargeable under section five of this article to annual expense.

Rates to private customers [89]

SECTION 7. The commissioner shall fix the rates charged to private customers for the water, gas and electricity furnished them by the department, which rates shall, with the contributions from the other departments provided in section five of this article be sufficient, for each division, to cover the entire annual expense of said respective divisions as defined in said section.

Jurisdiction of the state board

SECTION 8. The state board shall have jurisdiction, of its own initiation [90] or upon petition of the mayor or of the city council or of ten taxable inhabitants of the city, or of any holder of any debt amounting to one thousand dollars or more which has been issued in connection with the operations of this department, to examine the operations and accounts of the department and to readjust the rates fixed by the commissioner for any division if in the opinion of the board such rates are insufficient with the aforesaid contributions by other departments to cover the annual expense of the division as hereinbefore defined.[91]

The board shall also have jurisdiction of its own initiation or upon petition as aforesaid to review any appropriation made by the mayor and city council as provided in section five of this article for the lighting of the streets, parks, playgrounds and public places, and if it finds that the appropriation is less than the fair commercial value of the service it shall so report to the mayor and the board of assessors and shall state the amount which in its judgment should have been appropriated. This amount shall be included by the board of assessors in the tax levy for the year if the same has not been declared; and if the tax levy has been declared the excess of the said amount over the sum appropriated shall either be taken from the reserve fund, if sufficient, or included in the tax levy for the next year.

The board shall also have jurisdiction, of its own initiation or upon petition as aforesaid, to examine the use made of the construction fund, and if it finds that any part of the same has been used for purposes not authorized by the provisions of section six of this article to readjust the rates fixed by the commissioner so that the impairment of the fund shall be made good from the revenues of the department during such period, not exceeding three years, as the board shall determine.

Accounts [92]

SECTION 9. The accounts of the financial operations of each division of the municipal department shall so far as practicable be kept separately for each division.

The current accounts of the department shall be kept and the annual report shall be made in such manner as to

show, for each division and in such detail as the city auditor may require, the receipts during the year from the different classes of private customers, from each department of the city government, and from miscellaneous sources; the payments during the year for annual expense including in separate items all payments for maintenance and repairs, for interest, sinking funds, debt, taxes and depreciation, the resulting surplus income, if any, and the disposition of it; the expenditures for construction during the year; the amount of money borrowed during the year and the purpose for which it has been or is to be used; the payments to and out of the construction fund during the year; the outstanding obligations at the close of the fiscal year, with the amount of money on hand to meet them; the population supplied, the number of customers of each class, the total and average daily consumption, the consumption per capita of the population and per consumer, the income and expense per capita and per unit of output, and such other data as may be prescribed by ordinance.

The commissioner shall also keep and include in the annual report a separate account showing for each division and in such detail as the city auditor may require, the total construction cost of the works to date, the sources from which the money was procured, the total amount of money borrowed to date, the outstanding gross and net debt, the liabilities for construction, the aggregate payments to and from the construction fund, the aggregate depreciation charges and such other data as may be prescribed by ordinance.

Acquistion and management of other business enterprises

SECTION 10. If at the passage of this act or hereafter the city is authorized by law to acquire or operate markets, ferries, docks, wharves, subways, and other enterprises of similar nature, the same shall, so far as practicable, be managed and operated and their accounts shall be kept in the manner provided in this article for water, gas and electric works.[93]

Proprietary interests of the city [94]

SECTION 11. All water works, gas works, electric works, markets, ferries, subways and other similar property at any time belonging to the city and the rents and profits

thereof and all real estate not used or held for some particular department shall be held and owned by the city in its private or proprietary capacity, and the legislature shall not appropriate the same or the rents and profits thereof or reduce the said rents and profits without the consent of the mayor and city council or the payment of just compensation as provided by general law when private property is taken for public uses.

Trust funds

SECTION 12. All property devised, bequeathed or given to the city upon trust shall be in charge of the commissioner of property. He shall have charge of the management, care, repair and leasing of such property if real estate, of the collection of rents and of the collection of dividends and interest upon so much of such property as consists of stock, bonds, mortgages or similar investments; and shall apply the net income of the several funds to the purposes required by the terms of the respective trusts.

Property, which by the terms of the trust under which it is held may be sold, shall be disposed of by the commissioner only by authority of the mayor and city council.

Moneys belonging at any time to any trust fund as capital shall be deposited or invested by the commissioner with the approval in writing of the mayor and city treasurer in the manner provided in section thirteen of article VII respecting moneys in the sinking funds.[95]

ARTICLE XI. ENFORCEMENT

Penalties[96]

SECTION 1. Any person violating the provisions of the last paragraph of section five of article IV, or the provisions of the second and fourth sections of article VII, or the provisions of the last paragraph of the third section of article VII shall be punished by a fine of not more than two hundred dollars. Any person violating the provisions of article VIII shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Petitions[97]

SECTION 2. The court shall have jurisdiction upon petition of the mayor, of the city council, of ten taxable inhabitants of the city or of any creditor of the city to the

amount of one thousand dollars or more, to restrain the expenditure by any officer, division head, board or employee of the city of any money for any purpose not authorized by this act or by the laws applicable to the city as herein modified; to restrain the doing of any work or the making of any contract or obligation purporting to bind the city, not authorized by this act or by said laws; to compel the officers, division heads, boards and employees of the city to comply with the provisions of this act and of said laws; and in general to enforce by mandamus, injunction or other appropriate remedy the provisions of this act and of said laws.

Unlawful conduct or expenditures

The court shall have jurisdiction upon petition as aforesaid to declare void any contract, lease or order for work or materials made on behalf of the city which under the provisions of article VIII is voidable, and to decree the repayment by the contractor, lessor or vendor of all moneys theretofore paid by the city upon the contract or order; provided said petition is brought within one year after the making of the contract or the giving of the order or the payment of any money thereunder.

Voidable contracts

Petitions by the mayor under this section shall be brought in the name of the city. Petitions brought by the city council or by taxpayers or creditors shall be brought against the city and the officer, board or employee charged with having violated or intending to violate the provisions of this act. To any petition to avoid a contract or order, the contractor or vendor shall be made a party defendant. To any petition to avoid a contract or order under section three of article VIII the official implicated shall be made a party defendant. The court may in any case make such order as it deems meet respecting the admission of other parties.

Procedure

SECTION 3. Upon petition to the governor [and council]* by the mayor, by the city council or by five hundred taxable inhabitants of the city alleging that there is need of an impartial investigation of the finances and administration

Special investigations

* For use in Massachusetts, where the executive council is commonly charged with the power of confirming appointments.

of the city, the governor may [with the advice and consent of the council]* appoint a commission of three disinterested persons, who may or may not be residents of the city, to investigate its finances and administration.

Such commission shall hold office for such time as the governor may specify in appointing the same or for such longer period as the governor [and council]* may from time to time decide; may receive such compensation and may spend such sums for offices, clerks, accountants, experts, counsel and other employees or assistants as the governor [and council]* may from time to time approve. All such expenditures shall in the first instance be paid by the state which shall be reimbursed by the city upon demand.

The commission thus appointed shall investigate the finances and administration of the city, and shall report its findings and conclusions, with such recommendations for legislative or administrative reforms as it may deem wise, to the legislature and to the mayor and city council. It may report in part and from time to time.

Process For the purpose of enabling such commission to perform its duties, and to secure for the city and the legislature information concerning the finances and administration of the city, as a basis for such laws, ordinances and administrative orders as may be deemed meet, the commission shall have power to require the attendance and testimony of witnesses and the production of books, papers, contracts and documents relating to any matter within the scope of the said investigation. Such witnesses shall be summoned in the same manner and be paid the same fees as witnesses before the municipal courts of the city. Each of such witnesses may be represented by counsel who may examine the witness for whom he appears for not more than ten minutes during his examination. The chairman or any member of the commission may administer oaths to or take the affirmation of witnesses who appear before the commission. The commission may prescribe reasonable rules and regulations for the conduct of hearings and the giving of testimony.

Contempt If any person so summoned and paid shall refuse to attend, or to be sworn, or to affirm, or to answer any ques-

* For use in Massachusetts.

tion, or to produce any book, contract, document or paper, pertinent to the matter of inquiry in consideration before the commission, a justice of the court, in his discretion, upon application by the commission or any member thereof authorized thereto by vote of said commission, may issue an order requiring such person to appear before the commission, and to produce his books, contracts, documents and papers and to give evidence touching the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. Any person so summoned and paid who shall refuse to attend, or to be sworn, or to affirm, or to answer any question, or to produce any book, contract, document or paper, pertinent to the matter in consideration by the commission, and any person who willfully interrupts or disturbs, or is disorderly, at any hearing of the commission shall be punished by a fine not exceeding fifty dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

Penalty

Any person who willfully swears or affirms falsely before the commission upon any point material to the matter of inquiry shall be guilty of perjury, and shall be subject to the provisions of law respecting that crime.

Witnesses in other states

Upon application by the commission to any justice of the court the said justice may issue a commission to one or more competent persons in another state for the examination of a person without this commonwealth relative to any matter within the scope of said investigation. [The testimony of such person may be taken by open commission, or otherwise under the procedure, so far as the same may be applicable, provided by section forty-three of chapter 175 of the Revised Laws, and the said justice may issue letters rogatory in support of said commission] *.

Self-incrimination

Nothing in this act shall be construed to compel any person to give any testimony or to produce any evidence, documentary or otherwise, which may tend to incriminate him.

ARTICLE XII. ENACTMENT

This act shall take effect upon its passage.

* For use in Massachusetts.

B. COMMISSION TYPE

The text of the charter draft for the "responsible executive" type may be used for the "commission" type by making the corrections noted below.

TABLE OF CONTENTS

Article III. Omit section 4.

Article IV. Change title to "The Board of Directors."
Combine sections 4 and 5, and correct to "Powers of the Board of Directors."

Article IX. Add "and Divisions" in the title.
Rearrange as follows:

1. In general
2. Public affairs department
3. Law division
4. Election division
5. Public library division
6. Public safety department
7. Penal institutions division
8. Public charities division
9. Public works department
10. Treasury division
11. Accounting division
12. Recording division
13. Assessing division
14. Licensing division

TEXT OF CHARTER

Article I. General Provisions.

Section 1. ¶ 4, The phrase "board of directors" shall mean the mayor and directors of the city of ——, etc.
Change margin title to "Board of directors."
¶ 7, lines 2 and 4, "board of directors" for "mayor and city council."

Section 3. ¶ 1, line 3, "board of directors" for "city council."
¶ 2, lines 2–3, "board of directors" for "mayor and city council," and "city council."
line 11, "board of directors" for "mayor, city council."
line 12, "board of directors" for "mayor and city council."

Article II. Nominations and Elections.

Section 1. ¶ 1, line 1, "board of directors" for "city council."

Section 2. ¶ 1, line 3, "four members of the board of directors" for "seven members of the city council."

line 6, Omit all from the date to the end of the sentence and substitute: "and the two candidates for the board of directors receiving the highest number of votes shall hold office for two years, the two receiving the next highest number of votes shall hold office for one year."

¶ 2, line 4, Omit three lines and substitute: "and two members of the board of directors for three-year terms."

Section 3. ¶ 1, lines 2, 5, 8 and 10, "board of directors" for "city council."

¶ 2, line 5, "board of directors" for "city council."

¶ 3, lines 7 and 8, "board of directors" for "city council."

Section 4. ¶ 1, line 1, "board of directors" for "city council."

Section 7. Ballot form. "BOARD OF DIRECTORS" for "CITY COUNCIL." Omit "(or THREE)".

Article III. The Mayor.

Section 3. ¶ 2, Omit this whole paragraph and substitute:

"The mayor shall preside and may vote at all the meetings of the board of directors and may attend the meetings of and address the school committee upon such subject as he may desire, but shall have no vote in that body."

Section 4. Omit all of this section.

Section 5. ¶ 1, lines 2–3, "acting-chairman of the board of directors" for "city solicitor."

line 6, Omit last sentence.

Section 6. ¶ 1, line 2, Omit after "mayor" to and including "council" and substitute "the acting-chairman of the board of directors."

lines 14–16, Omit " the power . . . city council."
lines 18–20, Omit " and he is . . . city council."

Article IV. Change title to " The Board of Directors."

Section 1. ¶ 1, line 1, " board of directors " for " city council."
lines 1–2, " five including the mayor " for " seven."
lines 3–4, Insert: " They shall receive a compensation of —— thousand dollars per annum."

Section 2. ¶ 1, line 1, " board of directors " for " city council."
¶ 2, line 2, " board of directors " for " council."
lines 2–5, Omit " member . . . as chairman," and substitute " mayor who shall preside at its meetings. The board of directors shall, by vote of a majority of all members, choose by ballot one of their members as acting-chairman to preside in the absence of the mayor."
line 5, Insert " acting- " before " chairman."
line 10, Change " five " to " three."
line 10, "board of directors" for "city council."
line 11, Insert after "of," " both the mayor and acting- ".
line 13, Insert " acting- " before " chairman."

Section 3. ¶ 1, line 1, " board of directors " for " council."
line 3, " board of directors " for " city council."
¶ 2, line 1, " board of directors " for " council."
line 3, Substitute " week " for " thirty - one days."
¶ 3, line 2, " two " for " three."
line 3, " board of directors " for " council."
¶ 5, line 1, " three " for " four."
line 2, " board of directors " for " council."
¶ 6, line 1, " board of directors " for " council."

Sections 4 and 5 are to be combined.

Margin title will be: Powers of the board of directors.

The following two paragraphs are to be inserted:

" Section 4. The board of directors shall have control and supervision over all

the departments of said city, and to that end shall have power to make and enforce such rules and regulations as they may see fit and proper for and concerning the organization, management and operation of all of the departments of said city and whatever agencies may be created for the administration of its affairs.

"They shall, by a majority vote of all said directors, designate from among their number a director for each department provided in section one of article VI, which director shall have supervision of said designated department."

¶ 1, line 1, "board of directors" for "council."
lines 2–3, Omit "action by . . . and to,".
line 9, "director" for "commissioner."
lines 29–30, "board of directors" for "mayor and city council."

¶ 2, line 1, "board of directors" for "council."
lines 1–3, Omit "subject to . . . to,".

¶ 3, line 13, "board of directors" for "mayor or council."
line 14, "board of directors" for "mayor and city council."
line 16, "board of directors" for "council."
line 18, "board of directors" for "mayor or city council."
line 23, "board of directors" for "mayor and city council."

Section 5. Title in margin to be omitted.
Becomes paragraphs 6, 7, and 8 of Section 4.

¶ 1, line 1, "board of directors" for "council."
lines 1–2, Omit "without . . . III but,".
lines 4–5, Omit "the city clerk and".
line 5, Omit "other."
line 8, "any director" for "the mayor."
line 13, "city solicitor" for "mayor."
line 18, "board of directors" for "council."

line 30, " board of directors " for " city council."
lines 30–31, Omit " as . . . council."
¶ 2, line 1, " board of directors " for " city council."
¶ 3, line 2, " board of directors " for " city council."
Section 6. ¶ 1, lines 2 and 5, " board of directors " for " council."
¶ 2, lines 2 and 3, " board of directors " for " council."

Article V. The School Committee.
Section 3. ¶ 7, line 5, " board of directors " for " mayor."
Section 5. ¶ 1, lines 3–4, " board of directors " for " mayor and city council."
¶ 2, line 3, " board of directors " for " mayor and city council."
¶ 3, line 3, " board of directors " for " city council."
Section 6. ¶ 1, line 5, " board of directors " for " office of mayor."

Article VI. Organization of the Executive Departments.
Section 1. ¶ 1, Substitute table (see page 169).
¶ 3, line 15, " director " for " commissioner."
¶ 6, line 2, " board of directors " for " mayor."
Section 2. ¶ 1, line 2, Insert " and " before " of."
lines 2–3, Omit " and of the . . . property."
Section 3. ¶ 1, Omit whole paragraph and substitute:

> " The mayor's secretary and the other employees of his office, the city solicitor, the trustees of the public library, and the election commissioners shall be appointed by the mayor by means of a certificate signed by him and filed with the city clerk. The city clerk shall be elected by a vote of the board of directors. The trustees of the charities and poor relief division shall be appointed by the director of public safety."

¶ 2, line 2, " board of directors " for " city council."
¶ 4, line 4, " a director " for " the mayor."
line 6, " board of directors " for " mayor."
line 15, " proper director " for " mayor."

Departments and Divisions	Officers and Boards in charge of Departments and Divisions
Public Affairs Department	Mayor — Director of Public Affairs
Mayor's Office	Mayor's Secretary
Law Division	City Solicitor
Elections Division	Board of Three Commissioners
Public Library Division	Board of Three Trustees
Publicity Division	Publicity Agent
Public Safety Department	Director of Public Safety
Building Division	Superintendent of Buildings
Health Division	City Physician
Fire Division	Fire Chief
Police Division	Chief of Police
Penal Institutions Division	Superintendent of Penal Institutions
Charities and Poor Relief Division	Board of Three Trustees
Weights and Measures Division	Sealer of Weights and Measures
Insanity Division	Superintendent of the Insane
Public Works Department	Director of Public Works
Engineering Division	City Engineer
Streets and Sewers Division	Superintendent of Streets and Sewers
Parks and Playgrounds Division	Superintendent of Parks and Playgrounds
Cemetery Division	Superintendent of Cemeteries
Municipal Property Department	Director of Property
Water Division	Manager of Water Works
Gas Division	Manager of Gas and Electric Works
Electric Division	
Miscellaneous Property Division	Property Agent
Finance Department	Director of Finance
Treasury Division	City Treasurer
Accounts and Purchasing Division	City Auditor
Recording Division	City Clerk
Assessing Division	Board of Three Assessors
Licensing Division	Board of Three Commissioners

¶ 6, lines 2 and 5, " board of directors " for " city council."

line 11, " board of directors " for " mayor."

Section 4. ¶ 2, line 3, " director " for " commissioner."

Section 5. ¶ 2, line 3, " board of directors " for " mayor."

Article VII. Appropriations, Taxes and Loans.

Section 2. ¶ 1, line 8, " board of directors " for " mayor and to the city council."
line 15, " board of directors " for " mayor and city council."

Section 3. ¶ 1, line 3, " board of directors " for " mayor."
line 3, Omit " who " and substitute " and each director."
line 6, " board of directors " for " city council."
lines 7 and 20, Omit " the city " and substitute " his department."
lines 24–25, " board of directors " for " city council."
lines 26–29, Omit " but without . . . item thereto."
line 30, " board of directors " for " council."
lines 31–34, Omit " as also all . . . " to end of paragraph.
¶ 4, Omit this paragraph.

Section 4. ¶ 1, line 3, " board of directors " for " mayor."
line 12, " board of directors " for " mayor or city council."

Section 5. ¶ 1, line 4, " board of directors " for " city council."
lines 5–6, Omit " subject to . . . III,".
¶ 2, line 2, Omit " with the approval of the mayor."
¶ 3, line 7, " board of directors " for " mayor and city council."

Section 6. ¶ 1, lines 7–8, " board of directors " for " mayor and city council."
¶ 2, lines 13 and 14, " board of directors " for " mayor and city council."

Section 10. ¶ 1, line 3, " board of directors " for " city council."
lines 7–8, Omit " nor unless . . . III."

Section 13. ¶ 4, lines 5 and 9, " board of directors " for " mayor."

Article VIII. General Rules for the Conduct of Business.

Section 1. ¶ 2, lines 5 and 9, " board of directors " for " mayor."
¶ 3, line 6, " board of directors " for " mayor."
¶ 4, line 9, " board of directors " for " city council."
¶ 5, line 6, " board of directors " for " city council."
lines 7–8, Omit " and with . . . mayor."

line 18, " board of directors " for " mayor."
lines 19–21, Omit "in which case . . . council."

Section 3. ¶ 1, lines 2 and 7, " board of directors " for " city council."
line 10, " board of directors " for " mayor and city council."

Section 7. ¶ 1, line 4, " board of directors " for " mayor and city council."
¶ 2, line 6, " board of directors " for " mayor and city council."

Section 8. ¶ 1, line 8, " board of directors " for " city council."
¶ 2, line 4, " board of directors " for " mayor and city council."

Article IX. Duties of Particular Departments and Divisions.

Rearrange departments and divisions as provided in Table of Contents, *supra*, page 164.

Section 2. Add the following before the present paragraph:
" The mayor shall be the director of the department of public affairs and shall have supervision over the divisions provided for in section one of article VI."
Add margin title: Public affairs department.'
¶ 1, Change margin title to sub-title " Law division " for " Law department."
line 8, " board of directors " for " city council."

Section 3. ¶ 1, line 1, " director " for " commissioner."
¶ 2, lines 3, 4 and 7, " director " for " commissioner."
¶ 4, line 1, " director " for " commissioner."

Section 4. ¶ 1, line 1, " director " for " commissioner."
¶ 3, line 3, " board of directors " for " city council."
lines 3 and 4, " director " for " commissioner."
line 11, " board of directors " for " city council."

Section 5. Margin title: " division " for " department."
¶ 1, line 1, " superintendent " for " commissioner."

Section 6. Margin title: " division " for " department."
¶ 2, line 2, " board of directors " for " mayor."
lines 3–4, " members of board of directors are officers, directors, or stockholders," for

" mayor is an officer, director, or stockholder,".
line 4, " board of directors " for " city council."
line 5, " members of the board of directors are " for " mayor is."
lines 9–10, " board of directors" for " mayor and city council."

Section 7. Margin title: " division " for " department."
¶ 3, line 2, " board of directors " for " mayor and to the city council."
¶ 10, line 2, " board of directors " for " mayor and to the city council."
¶ 11, line 2, " board of directors " for " mayor and to the city council."

Section 8. Margin title: " division " for " department."
¶ 1, lines 1–2, " board of directors " for " city council."
line 4, " board of directors " for " mayor and city council."

Section 9. Margin title: " division " for " department."
¶ 2, line 3, " board of directors " for " mayor and council."

Sections 10, 11, 12, and 13. Margin titles: " division " for " department."

Article X. Municipal Property.

Section 1. ¶ 1, line 8, " director " for " commissioner."
¶ 2, lines 1 and 3, " director " for " commissioner."
lines 3–4, Omit " and approved in writing by the mayor."
line 6, " board of directors " for " city council."
¶ 3, line 2, " director " for " commissioner."
lines 3–4, " board of directors " for " mayor and city council."

Section 2. ¶ 1, lines 1, 9 and 15, " director " for " commissioner."

Section 3. Change sub-title: " board of directors " for " mayor and city council."
¶ 1, line 8, " board of directors " for " city council."
lines 11–13, Omit " and being . . . article III."
line 14, Omit " further."
lines 18–19, Omit "duly approved by the mayor."

line 22, " board of directors " for " mayor and to the city council."

¶ 2, line 3, " director " for " commissioner."

line 4, " board of directors " for " mayor and city council."

Section 4. ¶ 2, line 11, " board of directors " for " city council."

¶ 3, line 1, Omit " approval by the mayor of the."

line 2, " board of directors " for " city council."

¶ 4, line 8, " board of directors " for " mayor and city council."

¶ 5, line 3, " director " for " commissioner."

¶ 8, line 8, " board of directors " for " mayor and city council."

¶14, line 3, " board of directors " for " city council."

Section 5. ¶ 1, line 1, " director " for " commissioner."

¶ 2, line 2, " director " for " commissioner."

¶ 3, line 1, " director " for " commissioner."

¶ 4, line 4, " director " for " commissioner."

¶ 5, lines 12–13, " board of directors " for " mayor and city council."

line 17, " director " for " commissioner."

¶ 7, line 2, " director " for " commissioner."

¶ 8, lines 3–4, " board of directors " for " mayor and city council."

Section 6. ¶ 2, line 2, " director " for " commissioner."

¶ 3, line 1, " director " for " commissioner."

Section 7. ¶ 1, line 1, " director " for " commissioner."

Section 8. ¶ 1, lines 2–3, " board of directors " for " mayor or of the city council."

line 8, " director " for " commissioner."

¶ 2, line 3, " board of directors " for " mayor and city council."

line 7, " board of directors " for " mayor."

¶ 3, line 6, " director " for " commissioner."

Section 9. ¶ 3, line 1, " director " for " commissioner."

Section 11. ¶ 1, line 9, " board of directors " for " mayor and city council."

Section 12. ¶ 1, line 2, " director " for " commissioner."

¶ 2, line 2, " director " for " commissioner."

line 3, " board of directors " for " mayor and city council."

¶ 3, line 2, " director " for " commissioner."

line 3, " board of directors " for " mayor."

Article XI. Enforcement.

Section 2. ¶ 1, line 2, " board of directors " for " city council."

¶ 3, line 1, Insert " or by the board of directors " after " mayor."

lines 2–3, Omit " by the city council or."

Section 3. ¶ 1, line 2, " board of directors " for " city council."

Article XII. Enactment.

PART III

NOTES TO THE CHARTER DRAFTS

NOTES TO THE CHARTER DRAFTS

1. The proper function of tables of contents and marginal notes in a public statute is to facilitate the examination of the law, not to aid in its construction (See *Provident L. & T. Co.* v. *Hammond*, 230 Pa. 407, 418); but to avoid errors and contentions this should be made clear in the charter itself.

2. It is customary to insert at the beginning of a city charter a careful description of boundaries, ward divisions, etc. This is the place for such a description.

3. The idea of the charter is that the municipal, fiscal and calendar years shall coincide, so far as practicable, and that the city election shall be held in the first part of the preceding December. If a spring election is preferred as more remote from the date of the state election, or as likely to be accompanied by better weather, the dates for the municipal and fiscal years and for the special election provided in sec. 6 of art. VII must be advanced accordingly. A gap of several months between the beginning of the new fiscal year and the beginning of a new administration is to be avoided if possible.

4. Much of the substance of this article may properly be regulated, and for the city on whose experience it is mainly based actually is regulated, by the general statutes applicable to elections; but as these drafts are partly intended for use in states not provided with similar electoral machinery the more important and peculiar features of the system are here set out at length.

The details have been carefully modeled after the plan which has been in successful operation in the city of Boston for the past few years; but certain important simplifications have been introduced.

5. The object is to have no more special elections than are absolutely necessary; hence the distinction between vacancies within six months after a regular election and vacancies occurring later in the year.

6. The number of signatures required under the nomination paper system has been the subject of much discussion and evidently no choice

can be made which will satisfy everyone. The number suggested seems to meet the requirements of the case as set out in ch. iii, c, of Part I, *supra*, pp. 21–23; but no special virtue is claimed for this particular percentage.

7. There are many forms of preferential voting. The following method is the simplest and the one which should be experimented with at first:

Art. II, sec. 7, should be altered so that there will appear in the form of ballot three columns at the right of the names and residences of the candidates, headed respectively, — " First Choice," " Second Choice," " Third Choice."

These instructions should be printed at the top of the ballot:

> The voter is given an opportunity of expressing three choices in the order of his preference.
>
> To express your first preference place a cross × in the space at the right of the name and residence of the candidate desired in the column headed " First Choice."
>
> To express your second preference place a cross × in the column headed " Second Choice."
>
> To express your third preference place a cross × in the column headed " Third Choice."
>
> A voter may mark only one cross after the name of any candidate.
>
> If you wrongly mark, tear, or deface a ballot return it and obtain another.

These instructions should be inserted as paragraph five of sec. 7 of art. II:

If there is a majority of " first choice " votes for any candidate, he shall be deemed to have been elected. If there is no such majority then the " first choice " and " second choice " votes for each candidate shall be added together and if there is a majority of such votes for any candidate he shall be deemed to have been elected. If there is no such majority the " first choice," " second choice " and " third choice " for each candidate shall be added together and the candidate who receives a plurality of such votes shall be deemed to have been elected.

8. This clause is important to prevent the ambiguous or misleading forms in which questions often appear upon the ballot. " Shall chapter so and so of the acts of 19— be accepted " is one of them. One of

the worst features of the referendum in practice is the ease with which the object or effect of the proposed law can be misstated.

9. More detailed specifications for the power of the mayor are common in city charters; but they seem unnecessary. See also Note 64.

10. The idea is to give the mayor full concurrent power by way of absolute veto over all money orders; but a qualified veto only over other votes of the city council. See Part I, ch. ii, *supra*, pp. 15–17.

Four kinds of veto power are found in the legislation of this country: the original or qualified veto which may be overridden by the legislative body, usually upon a two-thirds or three-quarters vote; the absolute veto; the right to veto particular items in a money order, either absolutely or subject to further action by the legislative body; and the right, qualified or absolute as the case may be, to reduce items in a money order. All these forms have been found useful; but it is evident that the last three are necessary if the executive is to have full concurrent power over appropriations and loans. In the charter drafts the mayor, accordingly, is given the absolute power to reduce items, to eliminate items, and to veto the whole bill.

11. The city solicitor is given precedence over the chairman of the city council because, being the appointee of the mayor and in a sense his principal political adviser, he is more likely to give a continuation of the administrative policy which the people in electing the mayor may be assumed to have voted for, than is the chairman of a body elected for a different purpose.

12. The status and powers of an acting mayor have been the cause of much litigation, and the writer has attempted to define them in such a way as to avoid misunderstanding. The person (under this charter the city solicitor, or the chairman of the city council) who actually fills the office of mayor during a vacancy should have all the powers of that officer; but one who merely acts as mayor pending the absence or illness of this official does not require and should not have anything like the same powers. The former is the mayor of the city until a new election is held. The acting mayor is or should be merely a temporary substitute. The statutes defining the powers of an acting mayor are generally vague and sometimes entirely silent. It is sometimes provided that he shall be acting mayor "when the occasion arises," and his powers are sometimes defined merely as extending to "matters not admitting of delay." This phrase, although admittedly ambiguous

(see, for instance, *Dimick* v. *Barry*, 212 Mass. 165) is retained, but is qualified or illustrated by the context, and it is the hope of the writer that the clause as drawn will be found so plain as to avoid all controversy as to what the acting mayor can do and cannot do.

13. These provisions have been carefully drawn in the hope that they are sufficiently precise to avoid the unseemly controversies and litigation which have so frequently arisen over the office of chairman of the municipal legislature.

14. It is not intended by this clause to prevent meetings in camera, which in a small body are often desirable and are inevitable anyway. What can be done, however, is to see that the final votes take place at a public session at which any member may speak his mind.

It may be noted at this point that the charter contains no provision that the council shall be judge of the qualifications of its own members. This provision is found in almost every city charter with which the writer is familiar but is entirely inconsistent with an electoral system which specifies the manner in which the members shall be nominated and elected. In all such cases the clause is probably inoperative; and it is therefore omitted from the charter drafts in this book.

15. In like manner the common provision that the title of an ordinance shall be confined to a single subject is omitted. This is a clause commonly found not only in city charters but in state constitutions. In the experience of the writer, it is more likely to prove a source of litigation than to accomplish its ostensible purpose of giving information to the public.

16. The mere perusal of this and the following section is a sufficient comment upon the objection sometimes heard that under the responsible executive type of charter there is nothing for the city council to do. Additional powers and duties will also be found scattered through the other articles of the charter.

17. This provision is, it is believed, original, or at least uncommon in an American city charter. It is intended to provide what in foreign cities is a large source of public revenue. The owner of real estate who procures from the city the right to extend his property across the border of the highway, either in the form of bay windows or of underground vaults, ought to be willing to pay for it. The better form of payment is by way of annual rent, and express power, therefore, is

given to the mayor and city council to collect the fair annual value of such encroachments in this manner.

18. This clause will be found to be more or less inoperative except in cases where the land taken has been assessed as a separate parcel. In such cases its utility is obvious.

19. It is better that the procedure in eminent domain should be fixed by a uniform state law than that, as frequently happens, different proceedings should be provided, and different rules for the measure of damage laid down, for takings for different purposes. If in any state there is no general law covering the subject this clause in the charter will, of course, have to be eliminated and a special provision substituted. This should follow the state precedents. The statutory provisions of the several states for proceedings under the eminent domain are so different that the writer has used here and in other parts of the charter drafts the most general words. If these drafts are made use of care should be taken that the reference to the eminent domain laws of the state should be accurate.

20. The object of this clause is to prevent the acquisition by the mayor and city council of property for department purposes which in the opinion of the department heads is not needed. This is a very common cause of waste, especially of moneys obtained by loan.

21. In most of the states there is a "public service" or "public utilities" commission, having general jurisdiction over the objects named. In some states, as in Massachusetts, there are two boards, one for railroads and street railways, and another for gas and electric lighting companies. The writer has attempted to draft this clause so as to cover both these cases.

If there is no such state board the clause may still, we think, be allowed to stand. It would be applicable as soon as such a board should be created; and the time is evidently not far distant when all the states will be provided with administrative machinery of this character. See Note 49.

See the reasons for this plan of franchise-granting as set forth in Part I, ch. v, a, *supra*, pp. 43–44.

22. This provision for the approval of long-term contracts is modeled after the Boston charter amendments of 1909; the idea being that the power to make contracts which are to bind the appropriating

power of succeeding city governments should not be vested solely in the administrative officers for the first year of the term, as without this clause would be the case under the general provisions of article VIII. The question having arisen, under the clause as drawn in the Boston charter (see Massachusetts *Acts and Resolves*, 1909, ch. 486, sec. 6), whether the ratification of the city council should follow or precede the approval of the mayor, the clause in this charter has been drafted to make it plain that the mayor must take the responsibility of approving the contract before it is submitted to the city council. See Note 52.

23. See the definition of the phrase "mayor and city council" in sec. 1, art. I.

24. See Part I, ch. viii, d, *supra*, pp. 74–75.

25. Much confusion and some litigation have been caused by the loose manner in which the tenure of appointees to office is commonly expressed, particularly when the appointment is to fill a vacancy. As the clause here under discussion and the provision respecting vacancies in section 5 of this article are drawn, when a vacancy occurs and is filled, the new appointee holds for the full term of three years from the first Monday of the January preceding; unless he is a member of a board, in which case he holds for the remainder of the term for which his predecessor was appointed.

26. The reasons for distinguishing in the mode of appointment between the different department heads are fully set forth in Part I, ch. iv, b (2) and ch. vi, c, *supra*, pp. 38–40 and 53.

27. This provision assumes, according to the definition in art. I, sec. 1, the existence of a state board having general jurisdiction over the appointment of municipal officers and employees. If there is no such state commission, but a municipal civil service commission, the references in this article and the definition in art. I should be altered. If there is no such board, either state or local, a local board should be created by the act. The writer is very strongly of the opinion, however, for the reasons explained in Part I, ch. vi, *supra*, pp. 50–57, that the board should be a state commission.

28. This is the ordinary civil service system as it exists in some of the states. It is very different, of course, from the special examination plan provided for the higher officers.

29. Professional work must frequently be secured from persons not in the regular employment of the city, but the exemption of such persons from the civil service requirements has been found to be subject to abuse. Hence the qualification in the text.

30. See Part I, ch. vi, f, *supra*, p. 57, and Note 56.

31. This is to prevent the demoralization of the municipal service by permissive — and sometimes (as in Massachusetts) compulsory — veterans' exemption acts. These laws have done much to make the civil service system inoperative, and to bring it into disrepute. They are held to be unconstitutional in some states, but not in all. The effect of this clause would be to relieve the city from the application of any such exemption laws that may have been previously passed by the legislature, although it will not, of course, prevent the passage and application to the city of similar laws in the future.

32. See Part I, ch. vi, e, *supra*, pp. 53–56.

33. The statement is to set forth the " specific " reasons for the removal. Under a statute which simply requires the removing authority to give his " reasons " it has been held that such a phrase as " for the good of the service " is sufficient. This reminds one of the reason said to have been given by Cromwell for the dissolution of the Long Parliament, that he did it " for the glory of God and the good of the nation." It is clear that a provision of this sort, in order to be of any benefit to the official removed, should require some specification of the reasons for removal.

34. This paragraph secures to the department heads the absolute power of removing their subordinates, and, as pointed out in Part I, ch. vi, e, pp. 53–56, is as important in public as in private work. At the same time it gives a discharged employee the right to place upon the permanent records of the city his answer to the reasons assigned for his removal. The privilege is, of course, a poor equivalent for the right of appeal to the court sometimes given; but it is about all that can be granted without destroying the discipline and efficiency of the department. If some right of appeal is thought necessary, it should comprise no more than the right to a summary hearing before the mayor.

35. The power to make a temporary appointment is limited to one of the regular officers of the city, for the reason that otherwise an easy

method would exist for evading the whole scheme of appointments under the civil service system.

36. This list of requirements for the annual estimates is believed to include most of the financial information necessary for the preparation and passage of the budget, not omitting the important item of bills payable.

37. Perhaps in a large city this function should be intrusted to a small body of permanent officials; but for a city of 100,000 people the auditor, if a competent person and selected as he practically would be under this charter by the state civil service commission, should be competent to make the estimates in question.

38. See Part I, ch. vii, b, *supra*, pp. 59–60.

39. A provision authorizing the city to include in the tax levy a surcharge or "overlay" is common, but the purpose of such provisions is not generally understood. The object of the Massachusetts law upon this subject is simply to cover the taxes lost through abatements and to avoid fractional divisions of the amount to be assessed; but the loss from abatements is small, and in practice the overlay is used to swell the annual expenditures beyond the amount that could otherwise be appropriated. The clause as drafted in the charter limits the overlay to such an amount as may, in the opinion of the auditor, be necessary to avoid fractional divisions, and to cover abatements and also the estimated difference, if any, between the probable collections from taxes during the fiscal year and the tax levy for the current year. The current practice is to appropriate the full amount of the tax levy, and, as the whole sum will not come in during the fiscal year, to assume that the deficit will be offset by the amount of taxes for the preceding years which will be collected during the year in question. If, however, the tax levy is for a gradually increasing amount this calculation will evidently fail, and the object of the clause in question is to cover any deficit due to this cause as well as the deficit due to abatements.

40. This "alternative clause" is believed to be original, and is submitted as an improvement over the ordinary statutory tax limit, and also, except for the larger cities, as better than an unrestricted taxing power. Except for such cities it illustrates what the writer conceives to be the true and practical scope of the referendum in municipal administration.

41. Furniture, gymnastic apparatus and other perishable property ought not to be procured from loans which are to be repaid by the taxpayers of a period subsequent to the disappearance of the property through use and wear. Five-year loans are sometimes suggested for such purposes, but the better way, in the opinion of the writer, is to procure the money entirely from taxes.

The provisions of this article prohibit the raising of money by loan for "current expenses", but permit the borrowing of money for purposes of an annually recurrent nature, which, in the opinion of many persons, should also be met from taxes. Such expenditures are common to all large cities for schoolhouses, fire department buildings and similar purposes; and it is obvious that if the necessity for the construction of such buildings is so frequent as to involve a loan each year, it is just as well in the long run to raise the money by taxes as by loan. The time soon comes when the aggregate payments on account of debt incurred for these purposes will equal what the annual expense for the buildings themselves would amount to if defrayed from taxes. For the smaller cities this is, of course, not the case. The writer would suggest, therefore, that if this charter is to be applied to a city so large as to require the annual construction of schoolhouses and other public buildings, loans for the purpose be prohibited.

42. A somewhat different scheme will be found in the Massachusetts *Acts and Resolves*, 1913, ch. 719, sec. 5. The schedule in the text, however, is simpler and appears to the writer to be otherwise preferable.

43. See the discussion of the respective merits of serial and sinking fund bonds in Part I, ch. vii, g, *supra*, pp. 62–67.

44. This clause is to cover a loophole in the serial bond system which the ingenuity of the municipal politician was not slow to discover. Some cities issued the bonds in serial form but provided that the first payment should not be made for, say, three or five years.

45. See Part I, ch. vii, h, *supra*, p. 67.

46. Strictly speaking, these moneys should be used to meet the latest payments on account of outstanding serial notes to fall due, but this would involve the establishment of a sinking fund for the purpose, and as one of the main objects of this section is to get rid of the whole sinking fund system, it is provided that the moneys in question shall be used to pay off debt as rapidly as possible.

47. This clause is intended to confine the investment of the sinking funds to public securities and deposits in responsible banking institutions. It prohibits the investment of these funds in real estate and mortgages on real estate. It also prohibits the vicious practice of "investing" sinking funds in the city's own bonds. See the reasons for this prohibition stated Part I, ch. vii, g, *supra*, pp. 62–67.

Trust funds are by art. X, sec. 12, to be invested under similar restrictions. See Note 95.

48. This section is of course to be omitted wherever there is a constitutional municipal debt limit. Where there is no such constitutional provision the section should be retained and the blank filled out by the insertion of such a figure as seems under the circumstances best. The figure may well vary for different cities owing to the diversity of financial and other conditions, but if this charter is to take the form of a general law, the writer would suggest that either 2, 2½, or 3 per cent be adopted as the proper limit.

49. See Part I, ch. iv, b (1), *supra*, pp. 37–38, for the reasons for this clause. If there is no state board having the jurisdiction in question, the clause may either be omitted; or, as suggested in the cases considered in art. IV, sec. 4, art. VII, sec. 15 and art. X, sec. 8, allowed to remain and become operative when such a board is created. See Note 21.

If the suggestion made in ch. iv, b (1), *supra* pp. 37–38, for a state board with jurisdiction by way of suspensory veto over municipal loans should find favor, the reader is referred to a bill which was drafted by the writer for the speaker of the Massachusetts House of Representatives in 1912. It did not become a law. The measure was in substance as follows:

> "SECTION 1. The ———, the ——— and the ——— shall constitute a board to be known as the board of public debt, hereinafter called the board; the ——— shall be chairman, and the other two members shall receive each the sum of ——— dollars per annum for their services on this board in addition to their salaries as ——— and ——— respectively. The board shall have authority to appoint or employ such clerks, bookkeepers, experts and other assistants as it may deem necessary for the discharge of its duties, and shall be allowed for its expenses during the year nineteen hundred and twelve, the sum of ——— dollars which is hereby appropriated for the purpose.

The office of the board shall be in the rooms assigned to the——.

SECTION 2. All applications to the General Court by any state officer or board, by any county or by any city, town or political district within the commonwealth for leave to borrow money, or for the issue of state, county, city or district bonds or loans of any kind shall be considered by the board. No state officer or board, county commissioners, or city, town or district authorities shall make any such request of the General Court or any committee thereof without having given the board thirty days' notice in writing of such request, with the detailed reasons therefor. The clerks of the Senate and House shall upon receipt of any petition for the passage of any law authorizing or directing the issue of state, county, town, city or district bonds or loans of any kind immediately transmit a copy of the petition and accompanying bill, if any, to the board. Upon notice of any such request or petition, the board shall forthwith investigate the necessity or expediency of the proposed loan or debt. The board shall have power to examine the books, records, papers and accounts of any state department, county, board or institution, city, town or district by which or for whose benefit the proposed loan is to be made and the officers and employees of such department, board or institution, city, county, town or district shall furnish the board with such information as it may request concerning the debt and financial condition of such department, board, institution, city, town, county or district. As soon as practicable the board shall report to the General Court the facts of the case together with its opinion concerning the necessity or expediency of the proposed loan, and such other suggestions as it may deem proper concerning existing and future debts incurred by or for such department, board, institution, town, city, county or district.

SECTION 3. No city, or town, or fire, water or other political district of the commonwealth shall hereafter issue any debt or borrow any money, except under the laws relating to loans in anticipation of taxes, until sixty days after a copy of the vote authorizing the loan has been filed with the board, which shall forthwith investigate the necessity or expediency of the proposed loan and shall report within said period of sixty days to the city, town or district proposing to issue the loan, whether in the opinion of the board said loan should be issued or not,

together in case of disapproval with the reasons therefor. No loan thus disapproved by the board shall be issued, or if issued shall be valid, unless the city, town or district which has voted the same shall within thirty days after notice of the disapproval of the board again vote to issue the said loan. This vote shall be subject to the same requirements of law as the vote by which the loan was originally authorized."

50. If it is desired to provide a local referendum on city loans the following additional section is suggested:

Alternative referendum clause

SECTION 16. No loan shall be valid unless after the passage and approval as hereinbefore provided of the order or vote authorizing it, a majority of the voters present and voting at a special election called and held in the manner prescribed by law as modified by this act on the first Tuesday in May of any year shall ratify the same. At this election the several items of the order or vote shall appear upon the ballot in the following form:

Shall loans be issued for the following purposes?
Mark a cross × in the square at the right of your answer.

Schools $50,000	Yes	
	No	
Street Improvements $15,000	Yes	
	No	

The amount and purpose of each item shall appear in the same language as in the order or vote. If a majority of those voting on any item declare in favor thereof the order or vote shall be valid to the extent of such item. If a majority of those voting on any item declare against the same, the order or vote shall be invalid to the extent of such item.

51. This provision that alterations in and additions to a contract shall be subject to the same formalities as the original instrument, is of the utmost importance. A large part of the waste and no small part of the graft incident to public contract work has been due to the fact that claims for extras and additions are set up which the city finds it difficult to meet. See further the explanation in Part I, ch. viii, a, *supra*, pp. 68–71.

52. See Note 22 on pp. 181–182 as to the reason for this clause and its operation, insofar as the relative priority of action by the city council and the mayor is concerned.

A word as to the legal status of these continuing contracts may not be out of place. It has sometimes been held that a continuing contract, creating obligations payable in future years, should be regarded as a debt, and that the aggregate amount of the payments under it should be included in computing the borrowing capacity of the city under a constitutional debt limit provision. The prevailing opinion, including that of the United States Supreme Court, is, however, that such laws are not within the scope of an ordinary municipal debt limit. There is, however, involved in this subject another and more difficult question. This relates to the right of the city government for the time being to bind the appropriating power of succeeding city governments. There is very little law upon this question, but in the opinion of the writer, who has had occasion to consider it once or twice professionally, in the absence of legislative sanction such a contract is not binding upon the city except to the extent of the installment which is payable during the year in which the contract was entered into. In accordance with this view, such contracts are sometimes made expressly " subject to appropriations "; and this phrase has been thought to mean that if the city government in any subsequent year during the continuance of the contract makes any appropriation for the general subject matter, the contract at once attaches to the appropriation, and this becomes automatically available to meet the contract payment for the year. That is to say, if a contract is made with an electric lighting company for the payment of $10,000 a year for the next ten years and any appropriation is made during any year of the term for the general subject of public lighting the money becomes at once available to meet the requirements of the contract for that year. The writer has always had some doubt whether this is a proper construction of the phrase " subject to appropriations " if inserted in such a contract; but in any event it seems wise to clear the matter up in the charter so that the rights of the respective parties may be plain. The city cannot generally expect to get good prices on these matters from a private company unless it is willing to enter into a long-term contract; and the company on the other hand is entitled to a contract which is binding on the city. See Part I, ch. viii, a, *supra*, pp. 68–71.

The provisions of art. VII, sec. 3, and art. VIII, sec. 8, are intended to make it clear that, subject to the restrictions named, such contracts

may lawfully be entered into, and that when made they are binding on the city.

53. This paragraph is what the writer has devised as a working plan to meet the legitimate requirements of the executive departments without leaving more than the smallest opportunity open for evasion. Some latitude must be allowed, but on the other hand the lowest bidder ought not to be passed by without such cause and such formalities as will tend to prevent the abuse of the exception.

54. The phrase "lowest bidder" and the whole of this paragraph is intended to apply to unit price and percentage contracts as well as to lump-sum contracts. If there is any doubt on this point, the clause should be amplified so as to remove the doubt.

55. The subdivision or "splitting" of contracts for the purpose of evading a requirement of this nature is one of the most frequent devices of fraud or favoritism, and the clause in question, together with the penalties provided in art. XI, are intended to make this practice more difficult, if not impossible. As an illustration of the persistency of unscrupulous officials in their effort to evade the obvious meaning of a law requiring that contracts involving over a certain sum be let by public competition and advertisement, the writer may quote the remark made under oath by the chairman of a public board that the reason why he had split up purchases aggregating nearly $20,000 into ten contracts of about, say, $1990 each, and let them all to a favored contractor without competition, was his desire to "comply" with the law!

56. The practice of giving a preference to local contractors is one of the commonest ways of cheating the taxpayers of a city, and ought to be heavily penalized. Two illustrations may be cited.

A certain New England town erected only a few years ago its most expensive public building at a known cost of more than fifty per cent in excess of what a contractor from a neighboring city had agreed to do the work for, the avowed reason being merely that the work should be given to local people.

In 1898, during an investigation of the finances of one of the largest municipal lighting plants in the country, it appeared that the entire manufacturing plant (that is, the machinery) was obsolete before it was installed, the reason being that there was no manufacturer of electrical apparatus in the city who was making the type of machinery

then considered best. The result was that within a few years the machinery was scrapped and replaced with what ought to have been installed in the first instance. It is needless to add that the cost of both installations was paid for out of borrowed money.

Further illustrations of the consequences of preferring local contractors to the lowest bidder may be found in the *Reports* of the Boston Finance Commission, 1907–09, I, pp. 77, 277, 451–483. See also Part I, ch. vi, f, and viii, a, *supra*, pp. 57 and 68–71.

57. This clause is of course the clinching sanction of the system devised in this charter for the prevention of contract frauds. If an illegal contract can at any time be avoided upon petition of ten citizens, the contractor himself is going to see that his relations with the city are within the law.

58. This is an original provision and one which the writer suggests with some diffidence owing to the inherent difficulty of enforcing it. The impossibility, however, of preventing what is in many cities the principal cause of waste and political graft, that is, the doing or the pretense of doing by day labor what cannot properly be done in that way, is so great that any reasonable plan for putting a stop to it should at least be tried.

59. See Note 57, *supra*.

60. This section, while doubtless difficult to enforce (see Part I, ch. viii, e, *supra*, p. 75) will nevertheless act as a stimulant to the performance of their full duty by officials who wish to do so, and *in terrorem* over those who do not.

61. The provision that salaries shall be paid only after they have been earned would seem to be unnecessary, but in some cities the practice has obtained for years of prepaying a certain class of city employees upon the theory that if death, resignation, or removal intervene before the lapse of the month for which they have been paid, the over-payment will be returned to the city. This obviously does not happen, or at least does not always happen, and the prepayment itself should be prohibited.

62. The intention of the first paragraph in this section is to see that so-called " claims ", which when outside the limits of a written obligation are a frequent source of waste and fraud, are not paid without the most careful examination and preliminary approval.

The second paragraph is in like manner designed to prevent overpayments by the city upon judgment unless this is the result of a trial, or after the parties are at issue the amount has been approved first by the city solicitor and afterwards by the mayor and city council.

63. The writer would like to have seen his way to the drawing of some clause that would effectively curtail the extent to which department reports are sometimes padded and prolonged. There is in many of our cities a great waste of ink and money due to this cause. It is not easy, however, to stop this leak by law.

64. City charters customarily contain many more provisions respecting the duties which are to be performed by the several departments than have been inserted in the charter drafts in this book. The writer prefers a more general statement for the department heads as well as for the mayor. See Note 9, *supra*, p. 179. One reason is that most of the duties to be performed by the heads of departments are of a statutory nature, and the laws vary in different states, so that a bill intended as a model draft had better not attempt to specify them. In the next place many of the duties of these officers are obvious and require no specification.

Art. IX, however, contains for some officers, namely, the auditor, treasurer and assessors, and art. X contains for the commissioner of property, much more detailed directions as to the duties to be performed. The reason is that the duties specified are particularly important and are not likely to be discharged unless they are mentioned in the charter and penalties imposed for not performing them. The " teeth " of an effective public law should be visible.

65. The section devoted to the annual report of the city auditor is regarded by the writer as one of the most important in the entire act. It represents the result of much consideration given to the subject during the past twenty-five years, and is believed to include all the information which any member of the city government or the inquiring citizen has the right to find in a condensed report of the finances of the city. Many of the directions will seem to be new, but as a matter of fact there is hardly one which has not at one time or another been recommended by the writer either officially or professionally for incorporation in such a report.

It may also seem, even to one familiar with city business, that this section involves too much work. This is not so, however, because

most of the work when done once can be carried along from year to year without alteration. Wherever the system contemplated by this section has been put into practice no difficulty after the first year has been found in following it.

66. The reasons for this clause are to be found in Part I, ch. x, *supra*, pp. 79–81.

67. This clause is intended to prevent the auditor from including the fallacious and misleading statement, sometimes erroneously entitled, a comparison of "assets and liabilities." A municipal corporation has of course no assets in the commercial sense but cash and disused property; and the only use the writer has ever known to be made of a statement which includes as assets all the public property, such as parks and other real estate used and needed for public purposes, was to defend a great increase in debt during the administration of the mayor who had been responsible for it. There can, moreover, be no sure basis upon which to estimate the value of the non-commercial assets of a city. The writer had occasion a few years ago to examine the "balance sheet" of the treasurer of a Massachusetts city which showed a comfortable surplus of $1,856,000. Upon recasting the account, however, and omitting real estate which could not be sold and which brought in no income, the surplus disappeared, and a balance the other way was disclosed of $260,000. Here was an error of two millions of dollars in a financial statement of the condition of a small city, and the only use that was ever made of the computation was to justify an increase of debt.

68. This clause is inserted for cities and states which have undertaken to establish some scheme of uniform accounting. If this has not been done the entire paragraph should be omitted. The writer's views on the subject of uniformity of accounting will be found in Part I, ch. x, *supra*, pp. 79–81.

69. The first sentence of this paragraph contains the writer's under standing of the proper definition of market value.

The second sentence contains a similar definition or direction of the proper way to ascertain the market value of improved real estate. See Part I, ch. ix, *supra*, pp. 76–78.

70. The idea of this section is to concentrate in a single board the power to grant the innumerable licenses and permits generally scat-

tered through a number of departments, except in the case of permits for opening the streets, which for reasons of public safety must often be issued immediately upon application. The business of issuing licenses or permits for marriage, building construction, plumbing, victualers, selling of milk and other produce, pawnbrokers, junk dealers, second-hand goods stores, auctioneers, cheaper lodging houses, storing gasoline, wagon and carriage drivers, intelligence offices, private detectives, street parades, billiard and pool rooms, bowling alleys, amusement houses, picnic groves, circuses, manicures, massage or vapor-bath parlors, keeping cows, horses, swine, goats or fowl, carting grease, dumping ashes, operating street cars, and many others will therefore rest with this board.

71. A judicial commission is a much better body in which to lodge the selection of jurors than the provision (taken from the Boston charter) in this paragraph, and where such a commission exists this clause should be omitted.

72. This is an original feature of the charter and is believed by the writer to be one which will prove of the greatest service to cities contemplating the establishment of a municipal lighting plant. If some such plan had been in general use a large number of disastrous experiments in municipal ownership would doubtless have been avoided.

As to the board itself, this section presupposes a public utilities or public service commission. If there is none, the writer would recommend leaving the clause as it stands, but inserting at the end of the first sentence in section 3, the words " if any such board exists ". As already stated, *supra*, Notes 21 and 49, such boards will be soon found in all the states, and when they are established no greater use can be made of them than as a means of obtaining the preliminary information which a city ought to have before it embarks in the exploitation of public utilities upon its own account.

73. It is hoped that these provisions will not seem too restrictive. The writer's aim in this portion of the charter has been on the one hand to give the city a general power which has seldom been conferred by the state legislatures of this country, but on the other hand to see to it that the exercise of this power is hedged about by all the precautionary measures which the difficulties and dangers of the undertaking make desirable.

74. The three schemes noted under section 4 as (a), (b), and (c) are rendered necessary by the different systems under which private company franchises are operated, as more fully explained in Part I, ch. v, e, *supra*, pp. 47–48. It is assumed that any charter contract that may be in force will be at least as favorable to the city under clause (a) as eminent domain proceedings under (c) would be. If in any case this is not so, clause (a) should be omitted.

The third plan is the only one which requires further attention, and to that therefore the rest of the section is devoted.

If the length of this section appears to any to be excessive, the writer will only say that in his opinion, based upon experience in trying many cases under municipal ownership statutes in different states, there is not a single line in it which is unnecessary for the protection of the public interest.

75. The basis of the award is that which the writer believes to be substantially the legal rule for the valuation of property in proceedings of eminent domain where no franchise is taken. The reason for inserting these definitions at length is that their absence from the Massachusetts and Connecticut statutes on the subject has produced the longest and most expensive valuation cases in the courts. One of them lasted 116 days, most of which time was devoted to the presentation and discussion of evidence which under the provisions of this section would have been excluded at the outset.

The intent of the act is to secure to the owner the full preservation of his common law rights of property howsoever acquired (by purchase, prescription, eminent domain, or gift) without regard to the original cost; but to allow him nothing for his right or franchise to use the public ways for the distribution and sale of the commodity in which he deals, except in the rare cases in which he or his predecessors have paid cash to the public authorities for his franchise and then only to the amount actually paid without interest.

Such franchises as the right to be a corporation, to sell the commodity in question (if that be a franchise), to exercise the power of eminent domain, and other similar corporate (or individual) privileges are excluded from the award, and are retained by the owner for what they may be worth.

What are commonly known as water rights, that is, easements of flowage, diversion and power, when once acquired are common law rights of property and are to be included in the transfer and valuation.

All common law easements pass to the city. The street franchise, however, that is, the right obtained from the legislature or its agents to use the highways for pipes, conduits, wires, etc., ceases absolutely; and the franchise under which the city will operate is a new franchise obtained under the act itself. This, at least, has been the writer's interpretation of similar statutes, and it is the simplest explanation of the legal situation of the parties.

Under this clause there is no chance to enhance the award by reliance on such extraneous elements of value as are generally included in "going value" or "going concern value". If by these phrases, so much used and abused in rate and valuation cases, is meant anything more than the miscellaneous expenditures, including interest during construction, which are a necessary part of the actual capital cost, and therefore of the value, of any complete plant or structure, such additional element of value must, if it amounts to much, be dependent upon franchises or earnings, and is therefore expressly excluded from consideration. In eminent domain cases there may be a special legal element of value due to the fact that the plant has been tested in its assembled condition and found to disclose a special degree of economy in operation. This value is sometimes designated by or included in the phrase "going concern value", but it is usually small and need not be considered in this section, the object of which is merely to arrive at a fair compensation to interests which have no constitutional right to any.

Conscious from many years of professional experience in the trial of public service company valuation cases, both those which involve franchises and those which do not, of the difficulty in drawing an act which will effectuate the intent of the compulsory purchase feature of this charter, the writer has taken special pains with the definitions in sec. 4 of art. X. He will be disappointed if he has not succeeded in avoiding most of the ambiguities and inconsistencies which have caused so much litigation under the numerous similar acts passed in aid of municipal ownership in England, as well as in Massachusetts, Connecticut, and other American states.

76. This paragraph, taken in connection with the preceding one, protects the city against paying for property which is of no practical value. One cause of the many failures of municipal ownership in this country is the fact that the companies have succeeded in unloading on the city poor plants at high prices. A further object gained by

these clauses will be to vest in the commissioners the power either to exclude entirely, or to take into account in determining the aggregate value of the plant, any contracts of an improvident character which may have been entered into by the company. A company expecting municipal expropriation under a statute of this character has been known to enter into a long-term contract of a most onerous character with its stockholders (in the form of another corporation) for the production of a part or the whole of its motive power.

77. This clause, intended to penalize the unsuccessful party in the judicial proceedings, if any, for the determination of value, is based on the New York condemnation law, but differs from that in being made to work as it should, both ways, and also in that the penalty is a fixed one. The writer believes that some such device as this should be attached to every condemnation law, as a penalty of five per cent would operate as a discourager of the most expensive litigation that comes before the courts. It should at any rate be applied to proceedings under this charter so that the company may not set a preposterous figure in its offer, and so that if the price actually set is reasonable the city will pay it rather than contest the matter further.

78. This clause will doubtless operate upon all mortgages made after the date of the act. Whether it would affect mortgages made before the passage of the act may be questioned; and if it would not a certain embarrassment might theoretically arise in case the owner desired to sell and the mortgagee did not or was not satisfied with the price offered. This is a situation which is very unlikely to arise in practice and has not been further considered.

79. This clause, which permits a reconsideration of the case by the commissioners who were appointed to hear the evidence in the first instance, is important, as otherwise a new commission and an entirely new trial might be the result of some error of law. In fact, the municipal lighting law of one of our states (Connecticut) expressly provides for an entire new trial before a new commission in case any error has been committed by the first one.

80. The subject of depreciation would require a volume to treat with thoroughness, and only two points will be referred to here.

Section 5 of this article directs that the depreciation allowance shall be struck upon the aggregate first cost of the plant, not upon its current value as measured by first cost less depreciation to date or otherwise.

Both systems are in use; that is, some persons write off depreciation from present value or from the value at the beginning of the year, and some from aggregate first cost. The writer prefers the latter plan as being simpler and less open to manipulation.

As to the allowances themselves, there is room for the widest differences of opinion. The percentages specified in the charter are those which, if struck upon first cost and not upon depreciated value, the writer believes will on the whole and for the average plant work out a just result. There are of course water-works systems in which the annual depreciation is less than two per cent, particularly where the chief value of the system is in the sources of supply. There may, on the other hand, be water works consisting, for instance, largely of street mains and pumping machinery in which the annual depreciation might be far in excess of two per cent. The same considerations, generally speaking, apply to the three per cent suggested for the depreciation of gas works, and with still greater force to the percentage of depreciation adopted for an electric lighting plant.

Before this charter is applied to the industrial enterprises of any particular city the question of depreciation should be considered by experts and the percentages fixed accordingly; the writer has, however, not left the figures blank, because he is confident that those suggested will be found, for the average works and in the long run, to be substantially correct.

81. It will be noted that taxes are to be estimated not on the first cost, but on the depreciated or present value of the property, that is, on its book value at the beginning of the year, — the total first cost less aggregate depreciation to date. This is the nearest approach to market value that can be indicated by the books of a city and should therefore be adopted as the basis of taxation in order that the city's commercial property may stand upon a parity with that of the private taxpayer.

82. Some cities carry no insurance against fire, and this is, of course, a defensible policy if the city owns a great number of buildings. In the case of these special enterprises, however, it would seem best to insure. If policies covering more than one year can be taken out, the aggregate amount of insurance should be so divided or pro rated that an equal part will expire each year.

83. The general scheme of the act will be seen to be that the payments to and from the annual expense account of these commercial

enterprises are to be figured out and made exactly as if the enterprises were owned by private citizens. In a sense the system is one of bookkeeping, because some of these items can doubtless be offset one against the other and the balance only paid in cash, but in a wider and broader sense it is not a matter of bookkeeping at all, but of substance. The result of the plan, if strictly carried out, will be that the citizens will know just how much money they are making or losing, as the case may be, out of the commercial undertakings which they have seen fit to engage in; and this, according to the writer's experience, is an absolutely necessary prerequisite to the intelligent operation of such undertakings under municipal ownership.

84. There are only two of the charges to be made against the general departments of the city government for services rendered by the department of municipal property which will give any trouble. One of these, the amount which ought to be paid by the department of public safety for the annual cost or value, the extra cost as it may be called, incurred by the water works on account of the protection furnished against fire is left blank, because it depends on the size of the city, the extent of the hydrant system, the cost of obtaining a sufficient pressure in the pipes, and other considerations which vary in every locality. This blank should be filled up only after expert advice has been taken. As to the limits of the figure which should be written in, the writer will merely refer to the best discussion of the subject with which he is familiar, namely, the report of Messrs. Metcalf, Kuichling and Hawley, engineers of high repute, read at the annual meeting of the American Water Works Association held at Rochester, N. Y., in June, 1911.

One way for fixing the annual payment for fire protection is by the hydrant. The average amount paid to private water companies on this basis is something over $50 per annum per hydrant. Another way is to base the charge on the population and fix it at so much per capita according to the last census. Another way is to charge a small or nominal sum per hydrant and so much more per mile of main. To reach a fair adjustment of this rather difficult matter expert advice must be called in and the result will be different for every city.

The other department charge which will prove a possible source of dispute is the amount which should be paid to the proper department by the department of public works for lighting the streets and other public places. This ought to be based on what other cities are paying to private companies for similar service.

Section 8 of this article vests the final jurisdiction over these questions in the state board.

85. By interest, as used in the phrase "annual payments for interest", is meant the amount actually paid by way of interest on the bonds actually outstanding; not interest on first cost, or interest on the net investment.

86. This clause is intended to cover the case where the supply (water, gas, electricity, as the case may be) is obtained in part or wholly from another private or municipal corporation. This is a common incident in both private and municipal operation of these undertakings, and if the management of the works is not compelled to include the sums thus paid in its annual expense account it will be found in practice that they are sometimes left out.

87. Compare art. VII, sec. 1.

88. This section provides for a depreciation or construction fund, and is in substance new. It represents the result of many years' consideration given to the question of the best practical way to secure the operation of a municipal plant on sound financial principles. The fund provided for is in no sense imaginary, or represented merely by bookkeeping entries. It is to be an actual fund consisting of money invested specifically in securities and deposits. It is to be used by the department to replace those parts of the work the loss of which cannot be made good from the annual revenues; and in practice the department will draw on this fund in lieu of borrowing money for extensions and improvements. The certain result of the system if honestly adhered to will be to prevent that constant expansion of debt which has been the most unfortunate result of municipal ownership undertakings, both in this country and in England.

89. The scheme of the act is to provide that the rates shall at least be sufficiently high to meet the annual expense, including depreciation and debt requirements, as defined in section 5 of this article. The act contains no prohibition against the department's fixing rates high enough to produce a revenue in excess of the amount needed to cover the annual expense thus computed; but if a surplus results, it is, under the provisions of section 6, to be paid into the construction fund and is not to be used for general municipal purposes. The act does not prevent the earning of a surplus revenue if the city desires to do so, but

provides that until the works are paid for the surplus shall be put into the construction fund and used to reduce the amount of money that would otherwise be borrowed for extensions.

It will doubtless be objected by some that this plan, contemplating as it does that the rates shall not only be high enough to cover depreciation but also to pay the installments of debt and that the annual surplus, if any, shall be used for capital account, provides for a more rapid extinction of the debt than is customary. This is the fact and is intended. For, in the opinion of the writer, the main end to strive for in municipal ownership is the prevention of a perpetual debt, and every effort should be made to pay off as rapidly as possible such debt as is incurred, or at least to keep it within the smallest limits.

It will be observed, moreover, that the total payments for interest and principal will not exceed, say, six per cent on the cost, and this is no more than the profit that would be paid to a private corporation doing the same work.

See Part I, ch. xi, *supra*, pp. 76–78.

90. This provision is intended to give the state board the right to inaugurate of its own motion an inquiry into the question whether the rates are actually being maintained by the city in accordance with the requirements of this article. It is found in practice that the taxpayers, being also ratepayers, are generally slow to object to rates which they ought to know are too low. In order that the scheme of the act shall be carried out as intended it is necessary therefore to give the state board the power of initiation.

91. The board is not to have any power to decrease the rates, but only to increase them if insufficient.

92. This section, like sec. 7 of art. IX, is intended to make it certain that proper accounts shall be kept and published annually. There is no item in sec. 9 of art. X which ought not to be included in every report of a municipal water works, gas works, or electric lighting plant; but it is safe to say that no annual reports are made for any plant in the country which contain the whole of this information.

93. Sections 3 and 4, relating to the acquisition of gas, water and electric lighting plants are not applicable to the acquisition of such properties as markets, docks and wharves. They might perhaps be applied to ferries. The acquisition of subways, on the other hand,

would require special provisions. On the whole it would seem better to make no provision in this act for the acquisition of the kind of property referred to in section 10, but to leave the matter for special legislation in each case.

The accounts, however, should all be kept, so far as practicable, in the manner provided in this article for water, gas and electric works.

94. The justice of this provision is so obvious that it might well seem to be unnecessary to insert it. As matter of fact, however, cities and towns are more or less at the mercy of the legislature, and combinations between private corporations in the city and politicians in the state legislature against the corporate interests of the city, are not unknown. In the case, for instance, of the first municipal subway to be authorized in this country — that for Boston in 1894 — it was thought in drawing the act that no attempt would ever be made to deprive the city of the benefit of the expensive work then undertaken; but within three short years the thing was actually done, and a part of the work was turned over to a private corporation at an inadequate rent without compensation to the city and without the assent of the city authorities in any form. The constitutionality of this law was attacked by the citizens, but the act was upheld on the ground that the subway in question was not a proprietary holding of the city but rather a work in the nature of a highway extension. This interpretation was entirely inconsistent with the ideas of those who were responsible for the building of the original subway; and years later the legislature was induced to pass an act providing that in the future the subway should be regarded as city property in the corporate or proprietary sense. See the Massachusetts *Acts and Resolves*, 1894, ch. 548; *ibid.*, 1897, ch. 500, sec. 17; *Brown* v. *Turner*, 176 Mass. 9; Massachusetts *Acts and Resolves*, 1902, ch. 534, sec. 19; and *Sears* v. *Crocker*, 184 Mass. 586, 590. Whether a law like that of 1902, passed *ex post facto* as it were, would be a sure protection for the city against subsequent repeal may be questioned; but it would seem fairly clear that if such a law were part of the original act or franchise and the city should expend its money upon the faith and credit of this provision the legislature could not afterwards abrogate it without compensation or consent. Hence the desirability of making it clear from the outset that all enterprises of a commercial character which the city may engage in are to be regarded as private investments within the full protection which the constitution throws around such property, even when held by municipal corporations.

95. This provision is intended to put an end to the objectionable practice of investing trust funds in the city's own obligations. See the corresponding provision for the sinking funds in sec. 13 of art. VII. See Note 47.

Much comment has recently been made upon the practice of towns and cities in Massachusetts and in other states using trust money for general town purposes and carrying the "fund" in the form of a demand note, and correcting legislation has been passed in this state. See Massachusetts *Acts and Resolves*, 1913, ch. 634. There is, however, no difference between this practice and that of having the fund represented by a long-term bond. The money is used or misused in either case just the same; and the security is no better in the one instance than in the other. Trust funds represented by the borrower's obligations are not "invested" at all. The money is simply borrowed by the city, and that is in substance a breach of trust. Moneys bequeathed to the city in perpetual trust should be kept as a fund and not in the form of an evidence of indebtedness.

96. There is no provision in this section specifying the court's having jurisdiction over these offenses. This, it is assumed, will be regulated by general state law.

97. The idea of this section is to provide a practicable and reasonably certain means for enforcing the provisions of the charter. By giving, not only to the mayor and the city council, but to any ten taxable inhabitants the power to restrain the doing of any work or the making of any contract or obligation contrary to the provisions of the act, and to enforce affirmatively by mandamus the peremptory directions, it is hoped that an adequate system of enforcement has been devised.

For a definition of "taxable inhabitants" see sec. 1 of art. I.

98. The provisions of this section are based upon the writer's experience in drafting a number of acts of this sort, and also in the application of them. It will be observed (see, for instance, the last sentence in the section) that the act does not contain the drastic provision sometimes found in such laws by which it is sought to compel a witness to give incriminating testimony. In the opinion of the writer there is no need of such a remedy, and the idea of it is so repulsive to the average citizen as to increase unnecessarily the investigations of this kind.

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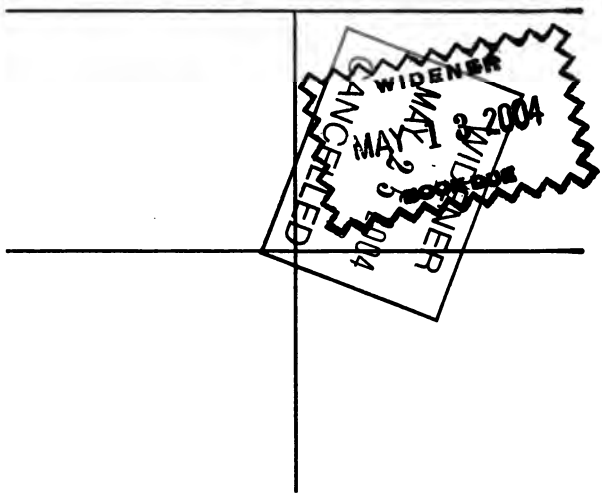

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